

**Harry A. Taylor**  
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July 1, 2003

Mr. Thom Lanfear, Associate Planner  
Lane County Land Management Division  
125 East 8<sup>th</sup> Avenue  
Eugene, OR 97401

Re: Grant Plan Amendment/Zone Change PA 01-5875

Dear Thom,

Attached are six additional documents and supporting information to be entered into the application record. These materials include:

- 1) Letter from Jay Pscheidt, Extension Plant Pathology Specialist, Oregon State University Extension Service, September 5, 2002, documenting site conditions. Mr. Pscheidt observed the filbert orchard is highly stressed by a number of factors but primarily by poor growing conditions resulting from river rock soil conditions physically inherent to the property.
- 2) A series of color photographs (2 pages) taken by Mr. Grant on August 30, 2002 showing the stressed nature of the trees described by Mr. Pscheidt's report.
- 3) 2002 Hazelnut Growers of Oregon Delivery Report (4 pages) indicating 6,536 pounds of debris and rock was processed.
- 4) Oregon State Department of Agriculture Inspection Memorandum, (4 pages) October and November 2002.
- 5) Hazelnut Growers of Oregon news letter (2 pages), May 5, 2003, noting declining shipments and lack of exports has delayed payments to the cooperative and its member growers.
- 6) Letter from Bob Booth, Consulting Forester, July 1, 2003, documenting an examination of the property. Mr. Booth concludes: there are no local examples of Sifton soil producing a conifer forest; Douglas Fir requires good drainage for optimum production; Sifton soil is an excessively drained soil with very rapid permeability; excessive drainage produces stress during dryer seasons; frequent chemical application is required due to rapid percolation; the 182 forest productivity rating of the Sifton gravelly loam soil is an error; and the property will not produce a viable Douglas Fir crop.

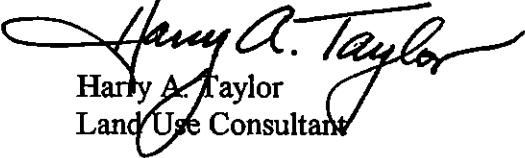
Grant PA/ZC PA 01-5875

July 1, 2003

Page 2

These materials further support the Applicant's position regarding the constraints of the property that prevent its viable use for either a filbert orchard or Douglas Fir forest crop. Attached are 12 sets of materials for distribution to the planning commission and Board.

Sincerely,



Harry A. Taylor  
Land Use Consultant



OREGON STATE UNIVERSITY  
1089 Cordley Hall · Corvallis, Oregon 97331-2903  
Telephone 541-737-3472  
Fax 541-737-2412

September 5, 2002

Dave Grant  
39040 McKenzie Hwy  
Springfield, OR 97478

Dear Mr. Grant,

This letter will summarize my observations of your hazelnut orchard from my perspective as OSU's Extension Plant Pathology Specialist. I visited your orchard during the morning of August 14, 2002 accompanied by Brian Wood of Wilco Farmers Cooperative.

Your orchard is highly stressed by a number of factors but primarily by poor growing conditions at that site. Much of the ground would not be considered optimum for growing hazelnuts. Evidence can be seen throughout the orchard as stunted trees showing poor vigor especially in the old river swales that run through the area. Trees planted on a good site would be much larger and touch each other between rows. These same areas are covered with river rock at or just below the soil surface. These rocks must make orchard floor preparation and harvest especially difficult and/or overly expensive.

Stressed trees generally exhibit other problems as are evidenced in your orchard. Many of the trees have sunburn on the southwest side of the trunk. Hazelnut has an especially thin bark and is very susceptible to sunburn under these conditions. Various organisms can exploit these damaged areas and cause further problems. There is evidence of wood rotting fungi in the heartwood of some trees (decayed wood scaffold limbs and fungal fruiting bodies) and bacterial blight on many trees (oozy, weepy areas with underlying dead cambium on trunks and limbs). The bacterial blight problem is unusual as it generally occurs only on young trees less than 5 years of age.

Other odds and ends include a general water shortage typical of hazelnut trees in August. This shows up mostly on the outer crown of the tree as leaves turn a little yellow, then brown as they become sunburned.

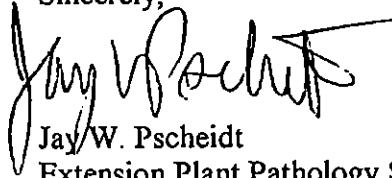


Agriculture, Home Economics, 4-H Youth, Forestry, Community Development, Energy, and Extension Sea Grant Programs, Oregon State University, United States Department of Agriculture, and Marion county cooperating. The Extension Service offers its programs and materials equally to all people.

You also had a few problem trees on the southern end of the orchard with numerous mechanical injuries to the roots near the root crown area. The reason is simple in that your flail hits these roots but why they are above ground in the first place is more difficult to determine. These larger surface roots could be due to shallow planting, removal of topsoil from around the base of the tree or lack of penetration by the roots into the soil. Whatever the cause, you should consider marking those areas and adjusting your orchard floor maintenance so they are not damaged further.

Since many of these conditions are related to the physical site such as topography and soil there is little you can do to correct the situation. Certainly you could establish a copper-based pesticide program for the disease organisms but that would not get at the underlying cause of the problem. Consideration of an alternative crop or use for the land would be prudent.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay W. Pscheidt". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the end of the name.

Jay W. Pscheidt  
Extension Plant Pathology Specialist

JWP



## A CLINIC CLOSE-UP

Bacterl.CCU

From the Plant Clinic, Extension Plant Pathology

August 1989

### Bacterial Blight on Older Trees

Last year I described something I called Filbert Dieback (The Northwest Nut Grower, Fall, 1988). Since it came to my attention late in the summer we had problems isolating a pathogen and making a positive diagnosis. This spring I revisited several of these orchards and a few new ones. Symptoms were similar to last year along with wet oozing cankers in the trunks. I was able to isolate Xanthomonas type colonies from each of these orchards, especially from the oozing cankers. The disease is Bacterial Blight we all know about.

What is unusual is that Barcelona and Ennis trees 8 to 16 years old are dying from trunk cankers. This is strange since only 1 to 4 or 5 year old trees usually have the disease so severe that they die. Why are the older trees dying of bacterial blight? I can only speculate and, like last year's article, blame our recent drought (water stress) and cold winter conditions. The other thing that concerns me is that one orchard was in what I would call a good filbert growing area.

**Symptoms:** Trees begin to dieback in July and August. Leaves on one or several limbs wilt, turn yellow and die. Brown leaves generally remain attached to the branch. Shallow cuts into the bark with a pocket knife reveal a brown discoloration. These cankers may extend several feet below the affected branch into the trunk. Roots and crown area remain healthy unless entire tree dies. Trees may die over winter or next summer as cankers continue to spread and girdle the tree.

**Control:** Same as last year. Remove branches well below the canker margin. This may extend into the scaffolding or trunk. If branches are not removed, the bacteria will survive and spread to healthy trees during the winter and spring. Disinfect pruning tools between trees and/or cuts with shellac thinner or 10% chlorox. Remove and replant dead trees.

Copper sprays can only help to protect healthy trees. Apply in the fall before the fall rains. Another application when

3/4 of the leaves have fallen may also be helpful.

I have been asked if the larger trees could be regenerated from suckers if the trees are on their own rootstock and cankers have not extended to or below the soil line. There has been no research on larger trees to suggest the success or failure of this method. Dr. Larry Moore, bacteriologist at OSU, has observed that suckers can develop cankers and suggests that the bacteria may be systemic in the tree.

Jay W. Pscheldt, Extension Plant Pathologist, Oregon State University, Corvallis, OR 97331-2903.

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Extension Service, Oregon State University, Corvallis, O. E. Smith, director. This publication was produced and distributed in furtherance of the Acts of Congress of May 8 and June 30, 1914. Extension work is a cooperative program of Oregon State University, the U.S. Department of Agriculture, and Oregon counties.

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AUGUST 30, 2002



SHOWS 12-15 YR. OLD TREE  
WITH BLIGHT/SUCKERS



SHOWS YELLOW TREES STRESSED  
WITH BLIGHT - MOVING INTO

TRUNK CRACK  
DUE TO STRESS, LACK  
OF WATER. ↓



BACTERIA BLIGHT  
CAUSES CRACKS  
ON TRUNK OF TREES

- 26 yr. OLD TREE
- SHOWS BLIGHT - FROM YOUNG TREES.
- ROOTS AT SURFACE
- OLDER TREES INFECTED BY YOUNGER STRESSED TREES

2002 Crop

11/05/2002 8:30:27 AM

## Hazelnut Growers of Oregon Delivery Report

Grant Farms

Variety: BARCELONA OrchardNo: 1

Ticket Number R00775

Date Received 10/15/2002

Location: Walterville

RecptNo: 20512

### Weights and Adjustments

			Lb	Lb
Received Weight				16,680.00
Washed Weight				15,150.00
Moisture		26.2000%		<u>1530</u>
less Dryaway		17.2000%	2,605.80	
less Debris (gm/sample)	40	1.0968%	137.59	
<b>Gross Dry Weight</b>				<b>12,406.61</b>
less Wormy		0.3333%	41.36	
less Rancid/Mold/Decay		1.6667%	206.78	
less Seriously Shriveled		8.6667%	1,075.24	
less Blanks		3.6667%	277.01	
<b>Total Cullage</b>				<b>1,600.38</b>
<b>Merchantable Weight</b>				<b>10,806.23</b>

### Payment Details

<b>Gross Pay</b>	0.4900 \$/Lb Merchantable Wt			<b>\$5,295.05</b>
Cleaning Charge	65.0000 \$/Ton Received Wt		\$542.10	
Sorting Charge				
less Worms	0.0000 \$/Lb Gross Dry Wt	\$0.00		
less Rancid, Mold, Decay	0.0000 \$/Lb Gross Dry Wt	\$0.00		
less Seriously Shriveled	0.0425 \$/Lb Gross Dry Wt	\$527.28		
<b>Total Sorting Charge</b>			\$527.28	
OFC Charges	9.0000 \$/Ton Merchantable Wt		\$48.62	
<b>Total Charges</b>				<b>\$1,118.00</b>
<b>Net Payment</b>				<b>\$4,177.05</b>

Delivery Payment \$54.03

GrowerID: GR5000CM

2002  
6536 lbs.  
ROCK



2002 Crop

11/08/2002 2:55:35 PM

## Hazelnut Growers of Oregon Delivery Report

Grant Farms                      Variety: BARCELONA    OrchardNo: 1                      Ticket Number R00902  
 Date Received 10/15/2002      Location: Walterville                      ReceiptNo: 20519

### Weights and Adjustments

		Lb	Lb
Received Weight			8,320.00
Washed Weight			7,164.00
Moisture	26.1500%		
less Dryaway	17.1500%	1,228.63	
less Debris (gm/sample)	32      0.8796%	52.21	
<b>Gross Dry Weight</b>			<b>5,883.16</b>
less Wormy	0.0000%	0.00	
less Rancid/Mold/Decay	1.0000%	58.83	
less Seriously Shriveled	0.6667%	39.22	
less Blanks	11.0000%      6.9038%	406.16	
<b>Total Cullage</b>			<b>504.21</b>
<b>Merchantable Weight</b>			<b>5,378.95</b>

1156

### Payment Details

Gross Pay	0.4900 \$/Lb Merchantable Wt		\$2,635.68
Cleaning Charge	69.0000 \$/Ton Received Wt		\$287.04
Sorting Charge			
less Worms	0.0000 \$/Lb Gross Dry Wt	\$0.00	
less Rancid, Mold, Decay	0.0000 \$/Lb Gross Dry Wt	\$0.00	
less Seriously Shriveled	0.0000 \$/Lb Gross Dry Wt	\$0.00	
Total Sorting Charge			\$0.00
OFC Charges	9.0000 \$/Ton Merchantable Wt		\$24.20
<b>Total Charges</b>			<b>\$311.24</b>
<b>Net Payment</b>			<b>\$2,324.44</b>

**Delivery Payment**      \$26.89

GrowerID: GR5000CM

2002 Crop

11/08/2002 2:55:35 PM

## Hazelnut Growers of Oregon Delivery Report

Grant Farms	Variety: LEWIS	OrchardNo: 1	Ticket Number R00901
Date Received 10/15/2002	Location: Walthville		RecptNo: 20518

### Weights and Adjustments

		Lb	Lb
Received Weight			1,880.00
Washed Weight			1,570.00
Moisture	17.1500%		<u>310</u>
less Dryaway	8.1500%	127.95	
less Debris (gm/sample)	70 1.7301%	24.95	
<b>Gross Dry Weight</b>			<b>1,417.10</b>
less Wormy	0.0000%	0.00	
less Rancid/Mold/Decay	3.0000%	42.51	
less Seriously Shriveled	0.0000%	0.00	
less Blanks	0.6667% 0.4011%	5.68	
<b>Total Cullage</b>			<b>48.20</b>
<b>Merchantable Weight</b>			<b>1,368.90</b>

### Payment Details

<b>Gross Pay</b>	0.4900 \$/Lb Merchantable Wt		<b>\$670.76</b>
Cleaning Charge	64.0000 \$/Ton Received Wt		\$60.16
Sorting Charge			
less Worms	0.0000 \$/Lb Gross Dry Wt	\$0.00	
less Rancid, Mold, Decay	0.0000 \$/Lb Gross Dry Wt	\$0.00	
less Seriously Shriveled	0.0000 \$/Lb Gross Dry Wt	\$0.00	
Total Sorting Charge			\$0.00
OFC Charges	9.0000 \$/Ton Merchantable Wt		\$6.16
<b>Total Charges</b>			<b>\$66.32</b>
<b>Net Payment</b>			<b>\$604.44</b>

**Delivery Payment**      \$6.84

GrowerID: GR5000CM

2002 Crop

11/08/2002 4:58:11 PM

## Hazelnut Growers of Oregon Delivery Report

Grant Farms	Variety: BARCELONA	OrchardNo: 1	Ticket Number R00956
Date Received 10/26/2002	Location: Waltherville		ReceiptNo: 20584

### Weights and Adjustments

		Lb	Lb
Received Weight			13,140.00
Washed Weight			9,601.00
Moislure	28.1500%		<del>3539</del>
less Dryaway	19.1500%	1,838.59	
less Debris (gm/sample) 206	5.7342%	445.11	
<b>Gross Dry Weight</b>			<b>7,317.30</b>
less Wormy	0.0000%	0.00	
less Rancid/Mold/Decay	0.3333%	24.39	
less Seriously Shriveled	1.0000%	73.17	
less Blanks 6.3333%	3.8988%	285.28	
<b>Total Cullage</b>			<b>382.85</b>
<b>Merchantable Weight</b>			<b>6,934.45</b>

### Payment Details

<b>Gross Pay</b>	0.4900 \$/Lb Merchantable Wt	<b>\$3,397.88</b>
Cleaning Charge	84.0000 \$/Ton Received Wt	\$551.88
Sorting Charge		
less Worms	0.0000 \$/Lb Gross Dry Wt	\$0.00
less Rancid, Mold, Decay	0.0000 \$/Lb Gross Dry Wt	\$0.00
less Seriously Shriveled	0.0000 \$/Lb Gross Dry Wt	\$0.00
Total Sorting Charge		\$0.00
OFC Charges	9.0000 \$/Ton Merchantable Wt	\$31.20
<b>Total Charges</b>		<b>\$583.08</b>
<b>Net Payment</b>		<b>\$2,814.80</b>

**Delivery Payment**      \$34.67

GrowerID: GR5000CM

**OREGON STATE DEPARTMENT OF AGRICULTURE**  
INSPECTION MEMORANDUM

F 84880

MESH-DRAWN SAMPLE  
 SUBMITTED SAMPLE

TICKET NO. 20512      DATE 10-30-02      INSPECTION POINT CORNELIUS, OR.

APPLICANT HAZELNUT GROWERS      GROWER GRANT

ALBERTS INSPECTED ROUND TYPE      NO. CRACK TESTS 3      NO. CONTAINERS      NET POUNDS

MOISTURE TEST		CRACK TEST			
			SUB TOTAL	TOTAL	PCT
WEIGHT IN	<u>10.00</u>	WORMS	<u>1</u>	<u>1</u>	<u>3.3</u>
		MOLD	<u>5</u>	<u>5</u>	<u>1.66</u>
WEIGHT OUT	<u>8.04</u>	RANCID			
NET LOSS	<u>1.96</u>	DECAY			
MOISTURE READING	<u>6.7</u> <u>6.5</u>	SERIOUS DAMAGE SHRIVEL	<u>26</u>	<u>26</u>	<u>8.66</u>
ADJUSTMENT	_____	BLANKS	<u>11</u>	<u>11</u>	<u>3.66</u>
ADJ. MOISTURE	_____	DAMAGE SHRIVEL/OFF COLOR	<u>14/1</u>	<u>15</u>	<u>5.</u>
TOTAL MOISTURE	<u>AVG. 6.6</u>	SHELL DEFECTS			
REMARKS:		STAIN			
		SPLITS			
		MACHINE DAMAGE			
		OFF TYPE			
		DEBRIS		<u>40%</u>	

THE UNDERSIGNED MADE OR SUPERVISED INSPECTION OF SAMPLES OF THE ABOVE LOT AND CERTIFY TO THE QUALITY AND/OR CONDITION AS STATED ABOVE.  
*Richard James Salinas*  
INSPECTOR

MECH. DRAWN SAMPLE  
 SUBMITTED SAMPLE

OREGON STATE DEPARTMENT OF AGRICULTURE  
 INSPECTION MEMORANDUM

FORM 1135F-99  
 F 87570

TICKET NO. 20584	DATE 11-8-02	INSPECTION POINT COENFHIUS, OR.
APPLICANT HAZELNUT GROWERS	GROWER D. GRANT.	
FILBERTS INSPECTED ROUND TYPE	NO. CRACK TESTS 3	NO. CONTAINERS
NET POUNDS		

MOISTURE TEST		CRACK TEST			
WEIGHT IN			SUB TOTAL	TOTAL	PCT.
	10.00	WORMS			
		MOLD	1	1	1.33
WEIGHT OUT	7.92	RANCID			
NET LOSS	2.08	DECAY			
MOISTURE READING	7.1 7.6	SERIOUS DAMAGE SHRIVEL	3	3	1.1
ADJUSTMENT		BLANKS	19	19	6.33
ADJ. MOISTURE		DAMAGE SHRIVEL/OFF COLOR	9/4	13	4.33
TOTAL MOISTURE	AVG. 7.35	SHELL DEFECTS			
REMARKS:		STAIN			
		SPLITS			
		MACHINE DAMAGE			
		OFF TYPE			
		DEBRIS	206	GR.	

I THE UNDERSIGNED MADE OR SUPERVISED INSPECTION OF SAMPLES OF THE ABOVE LOT AND CERTIFY TO THE QUALITY AND/OR CONDITION AS STATED ABOVE.

*[Signature]*  
 INSPECTOR

MECH. DRAWN SAMPLE

SUBMITTED SAMPLE

OREGON STATE DEPARTMENT OF AGRICULTURE  
INSPECTION MEMORANDUM

F 85793

TICKET NO. <u>20519</u>	DATE <u>11-6-02</u>	INSPECTION POINT <u>Cornelius Oregon</u>
APPLICANT <u>Hazelnut Growers</u>	GROWER <u>D Grant</u>	
FILBERTS INSPECTED <u>Round type</u>	NO. CRACK TESTS <u>3</u>	NO. CONTAINERS
NET POUNDS		

MOISTURE TEST		CRACK TEST			
WEIGHT IN	WEIGHT OUT	WORMS	SUB TOTAL	TOTAL	PCT
<u>10.00</u>	<u>8.02</u>				
		MOLD	<u>3</u>	<u>3</u>	<u>1</u>
		RANCID			
NET LOSS <u>1.98</u>		DECAY			
MOISTURE READING <u>6.3</u> <u>6.4</u>		SERIOUS DAMAGE SHRIVEL	<u>2</u>	<u>2</u>	<u>.66</u>
ADJUSTMENT		BLANKS	<u>33</u>	<u>33</u>	<u>11</u>
ADJ. MOISTURE		DAMAGE SHRIVEL/OFF COLOR	<u>14/1</u>	<u>15</u>	<u>5</u>
TOTAL MOISTURE <u>avg 6.35</u>		SHELL DEFECTS			
REMARKS:		STAIN			
		SPLITS			
		MACHINE DAMAGE			
		OFF TYPE			
		DEBRIS		<u>32</u>	<u>grs</u>

I THE UNDERSIGNED MADE OR SUPERVISED INSPECTION OF SAMPLES OF THE ABOVE LOT AND CERTIFY TO THE QUALITY AND/OR CONDITION AS STATED ABOVE.

Isabel Moya  
INSPECTOR

OREGON STATE DEPARTMENT OF AGRICULTURE  
INSPECTION MEMORANDUM

F 87467

MECH. DRAWN SAMPLE  
 SUBMITTED SAMPLE

TICKET NO.	20518 4	DATE	11-7-02	INSPECTION POINT	Cornelius-OR			
APPLICANT	H. G. O.		GROWER	Grant Lewis				
FILBERTS INSPECTED	Round Type	NO. CRACK TESTS	3	NO. CONTAINERS			NET POUNDS	
MOISTURE TEST		CRACK TEST			SUB TOTAL	TOTAL	PCT.	
WEIGHT IN	10.00	WORMS						
WEIGHT OUT	8.92	MOLD				9	9 3	
NET LOSS	1.08	RANCID						
MOISTURE READING	6.3 6.4	DECAY						
ADJUSTMENT	+	SERIOUS DAMAGE SHRIVEL						
ADJ. MOISTURE		BLANKS				2	2 .66	
TOTAL MOISTURE	Avg. 6.35	DAMAGE SHRIVEL/OFF COLOR				2	2 .66	
REMARKS:	in shell kernels 85kms Lewis 340gms.			SHELL DEFECTS				
I THE UNDERSIGNED MADE OR SUPERVISED INSPECTION OF SAMPLES OF THE ABOVE LOT AND CERTIFY TO THE QUALITY AND/OR CONDITION AS STATED ABOVE Guadalupe Rodriguez INSPECTOR				STAIN				
				SPLITS				
				MACHINE DAMAGE				
				OFF TYPE				
				DEBRIS	70gms.			



PHONE: (503) 648-4176 FAX: (503) 648-9515

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TO: MEMBERSHIP  
FROM: LEN SPESERT  
SUBJECT: BUSINESS UPDATE

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DATE: MAY 5, 2003

MARKETING AND FINANCE. The season opened with a planned 2001 crop carry-in of 10 million pounds and new 2002 crop receipts of 14 million for a total of 24 million to sell and ship. This reflected our 2-year marketing strategy of supplementing the short year with carry-over from the "big" crop year. We do this to enable us to supply our year-round buyers and maintain our market share in the short years.

Although shipments of old crop were heavy in the fall and winter, spring shipments plunged as buyers crashed into our higher 2002 crop prices at a time when they were being influenced by very cheap offerings from Turkey. As the season progressed, they also felt the pinch of world-wide recession, the international politics of war, and lately the economic impact of the panic caused by the SARS epidemic in China. As a result, we've seen slack demand, and shipments declined greatly relative to our original expectations. We have shipped about 12 million pounds so far, which is less than needed to cover the Cooperative's ongoing cash flow requirements.

A decline in shipments means a slow-down of cash inflows. We use cash inflows to pay down the seasonal loan, to pay for processing and value added to the inventory, and to cover the cost of maintaining ongoing business operations. Typically, we draw money from the seasonal loan to make scheduled grower payments and to cover any shortfall in cash inflows that occur due to sales timing. So far, we have borrowed to cover grower advances for the 2002 crop of 65 percent of the established value, the cost of the quality premiums, the added receiving station and drying costs, the storage costs, and the cost of converting the shipments to saleable merchandise. In addition, we borrow to cover the ongoing fixed operating costs.

Currently, we are doing everything we can to minimize the use of cash for the ongoing operations. We have laid-off most of the workers and reduced our management and staff. We have deferred salary adjustments, terminated service agreements, limited travel and cancelled subscriptions and membership in organizations such as Northwest Food Processors Association. We have also delayed all discretionary capital projects including tote bin repairs.

Nevertheless, there are several factors that have required more than typical amounts of cash this season. Among those is a build-up of value-added finished goods in anticipation of the interruption of production time and capability related to the sale of the Westnut properties. We have had to build these stocks to cover six months demand because we will need that amount of time to replace the manufacturing capability that is currently at Westnut. This has added about \$400,000 of cash cost to the inventory. This money will be recovered from the sale of these inventories, but it will take up to eight months to do so.

(over)



In addition, there is an exceptionally large subscription to the Chemicals And Fertilizer Program this season, which has added an additional \$250,000 to the cash needs. This money will flow back to the cooperative, but not until the first advance payment for the 2003 crop in November.

The 2001 crop was all shipped with the early season shipments, and the proceeds were distributed to growers in January. With the slow-down in the winter and spring demand, only about 20 percent of the new crop has been shipped, and cash inflow has been insufficient to cover cash outflow. At the April Board meeting, there was considerable discussion about the current cash position. Under the agreement with our bank, we can only borrow 65 percent of the value of our inventories. But, since we have used that money to make our earlier 2002 crop grower advances, and shipments have been slow, it is becoming obvious that there may not be enough borrowing capacity and cash flow to support the full scheduled June advance payment.

We recognize that the solution is to stimulate demand for sales, and we have embarked on a plan to generate additional cash flow by offering some quantities at discounted prices. Most Europeans currently have no interest in US products at any price (protesting the war in Iraq), although we are beginning to receive some inquiries from China. They are looking for very cheap prices right now, but I believe they will pay a higher price later in the summer when their normal demand returns. I will report the progress as we get closer to the June payment date.

At the Board meeting, we all placed our one-dollar bets on the size of the 2003 crop. The average guesstimate was 41,200 tons. At this level, we would expect some price decline, but not as great as we've seen in other big-crop years. My best-guess is a 40¢ price.

WESTNUT SALE. As has previously been reported, in an effort to reduce fixed costs, the Board decided a year ago to sell the Westnut surplus properties.

In preparation for this change, none of the 2002 crop was processed directly at Dundee. Instead, the Westnut crop was shipped to Cornelius for primary inshell processing and shelling, and then some kernels were shipped back to Dundee for value-added processing. Most of the Westnut growers deliver to Westnut receiving stations, not the plant, and so were unaffected by the change in procedure. Therefore, there was little disruption resulting from this basic closure of the Westnut facilities. Customers are often unaware of the facility in which the goods are processed (and probably don't care).

A buyer has been found for the Dundee properties, and we are in the process of closing the deal. The sale will include the land, buildings and installed machinery, but not the Westnut business, customers, or growers. The sale will probably close within the next 45 to 60 days. The proceeds will be used to pay off the purchase loan, and provide some positive cash flow.

ANNUAL DINNER. The annual dinner and business meeting has been set for June 20, 2003, beginning with a reception at 5:30 in the evening. The dinner will be held at the Greenwood Inn, Beaverton. An announcement will follow, but now is the time to make your plan to attend. Please mark your calendar so you won't forget.

**Booth Consulting, Inc.****Bob Booth, State Certified General Appraiser,  
Consulting Forester**

Timber Cruises & Appraisals  
Real Estate Appraisals  
Value Consultations  
Forest Management Planning  
Log Marketing  
Land Use Planning

July 1, 2003  
TaylrGrantLt.03

Mr. Harry Taylor  
Land Use Consultant  
P.O. Box 1420  
Veneta, OR 97487

RE: Dave Grant Forest Soil Analysis / Plan Amendment / Zone Change PA 01-5875.

Dear Mr. Taylor,

Mr. Grant accompanied me on an examination of his property for the purpose of gathering information that would support, or not support, the speculation that the area of Mr. Grant's property included in his Plan Amendment/Zone Change request is highly productive forest land capable of producing Douglas Fir.

According to the Soil Survey of the Lane County Area, the Sifton gravelly loam soil was "formed in gravelly alluvium containing volcanic ash in the upper part". It is an excessively drained soil having very rapid permeability. I reviewed the Soil Survey of the Lane County Area to find areas of Sifton gravelly loam producing a conifer forest within the McKenzie River and Middle Fork of the Willamette River drainage. One could conclude, that if this soil was capable of producing a conifer forest, there should be some examples from which data could be obtained to estimate the forest productivity. There are none. The Sifton gravelly loam soils historically have been "moving" in the formation process because of the alluvial action of local rivers and volcanic activity laying down ash, preventing establishment of long term crops such as timber. This is evidenced by the layered and mixed nature of the gravel, ash, and larger stones below the "A" Horizon.

Douglas Fir requires good drainage for optimum production. However, excessive drainage produces water stress during the dryer seasons, and can cause poor growth conditions leading to mortality. This is also true for many other conifer species, for example, there is evidence of water stress occurring within the Willamette Valley area at the present time in Grand Fir, and much of the Grand Fir has died (according to the Lane County Extension Forester). Hardwoods such as Cottonwood require substantially more water availability than conifers, and would not do well on

the Sifton gravelly loam soil. The Sifton gravelly loam requires use of frequent nitrogen and phosphorus applications to promote growth for leafy vegetation because of the rapid percolation of water. This would be no less true for the growth of conifers, requiring a much higher intensity of management and expense than would be required for soil areas that are unquestionably forest soils.

The owner transplanted three Douglas Fir trees from local native stock. These three trees are the only Douglas Fir that I saw on the site. They are located near the residence where the lawn is continuously watered. These trees are about 25 years old, have many large limbs, have rounded crowns, and very poor "form class" (ratio of diameter outside the bark at 16 feet above stump height and the diameter breast height). A high form class tree will have a tree bole that is more cylindrical and makes a log with less taper than a low form class tree. These factors all indicate that the site is not well suited to growing Douglas Fir.

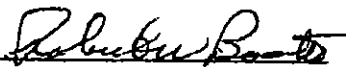
It is my opinion that the current soil forest productivity rating of 182 for the Sifton gravelly loam soil is an error, and at minimum should be critically reviewed by the SCS.

In conclusion, I do not believe the areas of Sifton gravelly loam soil will produce a viable Douglas Fir crop of commercial value.

Thank you for the opportunity to provide this service,

Sincerely,

BOOTH CONSULTING, INC.

By:   
Robert W. Booth, President

541.673.4846  
FAX: 541.673.0373  
e-mail: sollyeye@mcsi.net  
244 Apple Blossom Lane  
Roseburg, OR 97470

rec'd 7-1-03

# GROWING SOILS

Providing Quality Soils Information to  
Pacific Northwest Landowners Since 1979

June 29, 2003

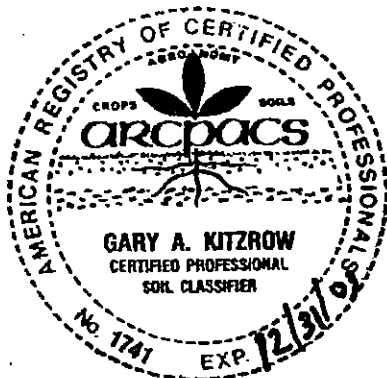
Larry Thorp  
Attorney at Law  
RE: David Grant Rezoning application

Points of clarification are advisable in this matter. Below is a summary of findings supporting our conclusions that a large portion of the current study area is non-resource in make-up and generally unsuited for agronomic enterprises.

- The soil maps which comprise the Grant parcel (and similar ones in Lane and other counties) are general Order II and Order III maps. Order II/III maps are only valid to 5 acres due to the publication scale of the maps and number of field observations performed. For the specified property, no backhoe exposures were used to classify Mr Grant's soils. Similarly, most of the delineations were made from stereoscopic photo interpretation, not field identification. That was in the mission statement of the NRCS at the time of the soil inventory. We completed an Order I soil Survey. This is the most detailed form of survey completed. We are confident of the exact composition of the soil mapping units present down to less than ½ acre (as compared with a 5 acre minimum in the USDA-NRCS report)
- In our previous soil reports, we outlined why certain portions of this parcel were not resource in make-up and generally are unsuited for farm crop production. In this discussion we showed that much of the parcel (over 1/3) is comprised of soils which have rubbly surfaces meaning many rocks on the surface. Additionally, we testified to the fact that much rock was also incorporated into the topsoil and upper 1 foot of soils in those same areas. Many rocks on or near the surface are the limiting factors where these conditions exist. This means the underlying soil whether it be 20 feet of loam or other soil is moot since the surface rock will preclude most cultivation techniques. Capability Class assignments are not directly made for rubbly units. The NRCS instead uses more blanket, general criteria to describe these features. Namely, rubbly surfaces and fragmental soils (>85% rock) and considered non-resource due to surface conditions NOT the soils themselves. The rocky areas previously described in our earlier reports cannot be considered suited for farm use and are distinctly non-resource due to localized features. These features would not be noted in Order II/III soil inventories since the confidence interval is only 5 acres (photos don't show rocky areas at that scale). The NRCS and therefore LCDC recognize this limiting feature.
- Sifton soils have ash from Mt Mazama in them. Also they are rocky but not nearly as rocky as the Grant soils, hence the term Sifton Variant. Rocky soils don't hold

hold water. Since Mr. Grant's parcel is laden with extremely rocky soils, the water holding capacities are NOT in accordance with the soil series concepts for the Sifton series. Otherwise, the soil physics and landforms mapped by the NRCS due closely conform to the concept for the Sifton series. What this means is decreased utility and use of the soils. Rocky soils will grow crops but the costs of maintenance and inability to plow a rock pile will limit production and cash generated.

- The percentage of resource vs non-resource in this lot is arguable. If you remove the buildings and roads from consideration, remaining is a large portion of this parcel which has a non-resource condition termed rubbly surfaces. Additionally, a large portion of the Sifton units are rockier and sandier than previously identified for by the NRCS mapping. Soil series concepts give a RANGE of CHARACTERISTICS for each soil we find. There are NO absolutes when it comes to soil morphologies. These extraordinarily rocky Sifton soils are simple a localized variant of the central concept, nothing more. To place an absolute Capability Class assignment on a small, finite land base is disingenuous and a breach of the concepts of Order II mapping. Local factors govern specific soils and geomorphic events, NOT a general soil series description which summaries a large host of variables.
- We have mapped over 1.3 million acres in 6 states to NCSS (National Cooperative Soil Survey) standards at the Order I and II levels. Our company has published 6 free-standing soil survey reports according to NRCS/NCSS standards. The USDA-NRCS subscribes to the NCSS requirements and protocols as well as do nearly all ARCPAC Certified Professional Soil Classifiers nationwide and in 43 countries. We have used the same standards here as we have completed in all surveys whether for USDA-Forest Lands, private timber lands or for small private ranches such as the one under current review. The only difference in this survey is we completed it at an Order I level. This means we are more certain exactly where each individual soil mapping unit is located on the landscape.



Please call with questions,

Gary A. Kitzrow, M.S. CPSC/CPSS  
Principal Soil Taxonomist

THORP  
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July 1, 2003

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JACK B. LIVELY (1923-1979)  
JILL E. GOLDEN (1951-1991)

Lane County Planning Commission  
125 East 8th Avenue  
Eugene, OR 97401

RE: PA 01-5875 (Application of David D. Grant)

Dear Commissioners:

David Grant is seeking approval of a Rural Comprehensive Plan (RCP) amendment from "Agriculture Land" to "Non Resource Land" and a zoning amendment from E-30 "Exclusive Farm Use" to RR-5 "Rural Residential" for a 30.19 acre site located south of McKenzie Highway 126 and the community of Waterville. Mr. Grant submitted a complete Land Use Application on June 27, 2001.

The Department of Land Conservation and Development (DLCD) detailed its opposition to Mr. Grant's application in a June 12, 2003 letter written by Ronald Eber. DLCD argues that Mr. Grant's application fails to adequately demonstrate that the subject property is not "agricultural land" as defined by goal 3 and the regulations set forth in OAR 660-033-020(1)(a)-(b). 1000 Friends of Oregon also voiced opposition to the application in a June 10, 2003 email from Lauri Segel. In her email, Ms. Segel argues that the 30-acre subject tract is agricultural land because it is part of a larger "farm unit." This letter responds to those specific concerns raised by DLCD and 1000 Friends of Oregon.

#### Necessary Practices

Under OAR 660-033-020(1)(a)(C), "agricultural land" includes "land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural land." DLCD states that Mr. Grant's Land Use Application improperly addressed this regulation by focusing on whether the subject tract is needed by adjacent farm operations "for their continued use." DLCD asserts that the proper analysis focuses on "whether the subject tract is needed to permit farm practices on adjacent lands (i.e., will development of the subject tract interfere with the current farm conducted on adjacent or nearby agricultural lands)."

An objective reading of the facts presented in Mr. Grant's application clearly demonstrates that the subject tract is not needed to permit farm practices on adjacent lands. To satisfy the requirements of OAR 660-033-020(1)(a)(C) an applicant must 1) identify the farm uses on adjacent lands, and 2) explain why the subject tract is unnecessary to the farm uses ultimately

identified as occurring on such adjacent lands. *DLCD v. Curry County*, 28 Or LUBA 205, 209 (1994), *aff'd*, 132 Or App 393 (1995).

Mr. Grant's Land Use Application thoroughly and accurately describes the farm uses on all farmlands adjacent to the subject tract. See pages 8-9. The application's detailed descriptions need not be repeated here. The subject tract is unnecessary for farm uses on those adjacent lands for several reasons. First, none of the farm uses occurring on adjacent farm lands have historically relied on the subject tract. Further, site-specific physical differences in land use capabilities separate the subject tract from all adjacent agricultural lands. The most telling indicator that rezoning of the subject tract will not interfere with farm use on adjacent lands is the fact that not a single farmer with nearby land has objected to Mr. Grant's application. The only objections filed to date are from non-farmers. It is hard to imagine that DLCD officials, who have never visited the site, would argue that it is necessary to maintain the subject tract as unproductive farmland for the sake of neighboring farmers when not a single neighboring farmer concurs.

Location of Mr. Grant's house and barn on the 30-acre subject tract does not mean that the 30-acre tract is needed to permit farm practices on his adjacent agricultural land. Testimony will be presented to the Commission explaining that it is commonplace for farmers in Lane County to work farmland that they live miles away from – even when no barn or other structure is present on, or adjacent to, the farmed land. The fact that farmers routinely manage farmland that lacks any on-site structures demonstrates that Mr. Grant's farm practices will not be interfered with if the tract of land containing his house and barn is rezoned or placed in separate ownership. Accordingly, the Commission should conclude that the 30-acre subject parcel is not needed to permit farm practices on any adjacent lands.

#### Farm Unit

DLCD's June 12th letter and 1000 Friend's June 10th email contend that the 30-acre subject tract is agricultural land because it is part of a larger "farm unit." Under OAR 660-033-020(1)(b), "Land in capability classes other than I-IV . . . that is adjacent to or intermingled with lands in capability classes I-IV . . . **within a farm unit**, shall be inventoried as agricultural lands even though this land may not be cropped or grazed." The regulation's key phrase, "farm unit," is not defined in any relevant statute or administrative rule. *Riggs v. Douglas County*, 167 Or App 1, 5 (2000).

The two leading "farm unit" cases are distinguishable from the present issue. In *DLCD v. Coos County*, 24 Or LUBA 173, *aff'd*, 117 Or App 400 (1992), a landowner sought to rezone 20-acres of a 175-acre parcel from "Forest" to "Rural Residential." The 175-acre parcel had been created in 1986 through partition of a larger tract of land. *Id.* at 140. The landowner stated in the partition application that he intended to continue farm use of the entire 175-acres. *Id.* According to the landowner, "The purpose of the [original] partition was 'to reorganize two working ranches and create smaller, more efficient management units.'" *Id.* The landowner's management plan, submitted to support creation of the 175-acre parcel, read as follows:

175 acre ranch used to raise cattle.

60 head of cattle are grazed on the ranch. There are two Brahma Bulls. Every September the calves are sold at the local Auction Barn for the market price. About 30 acres of land is swamp and relatively useless. The remainder is in 15 year old Douglas fir, which is to be harvested on a long term future program.

The cattle survive without much maintenance. They feed on the grass and drink from the creek. From November to March, the cattle are fed a total of 10 tons of alfalfa hay which is purchased for \$100 per ton.

Plans for the ranch include maintaining the present management program.

*Id.* at 142.

Based on the evidence detailing creation of the original 175-acre parcel, LUBA concluded that the 20-acre subject tract was part of a "farm unit." LUBA held that "regardless of whether the subject 20 acres may have been regarded as 'relatively useless' in the management plan quoted above, or actively farmed in the past, it is clear that the 175-acre parcel was created as a cattle ranching farm unit." *Id.* at 143-44.

The other leading case, *DLCD v. Curry County*, 28 Or LUBA 205 (1994), *aff'd*, 132 Or App 393 (1995), is similar to *Coos County*. In *Curry County*, a landowner sought to rezone 233 of his 272 acres from "Forest Grazing" to "Rural Residential." *Id.* at 207. The landowner's 272-acre property had been created in 1992 through partition of a larger 1,075-acre cattle ranch. *Id.* As part of this original partition, the landowner had submitted a resource management plan covering the 272-acres and indicating it would continue to be used for ranching. *Id.* Following the partition, the landowner continued to use the entire 272-acre tract for seasonal livestock grazing. *Id.* LUBA noted that partition of the 1,075-acre property into two smaller tracts had been carried out "on the basis that both would be managed as farm units." *Id.* at 208. Later in its opinion, LUBA again noted that "a division of the 272-acre parcel from the parent parcel was justified two years ago on the basis that the parcel was suitable for farm use and a farm management plan was adopted for the parcel." *Id.*

Based on its observation that the landowner's 272-acre tract had been created as a distinct farm unit just two years earlier, and that farming practices had continued on the entire 272-acre tract since that time, LUBA concluded that the 233-acre subject tract was part of a larger "farm unit" comprised of the entire 272-acres. *Id.* at 209. In support of its conclusion, LUBA emphasized that "the subject 272-acre parcel was divided from the applicant's adjacent working farm on the basis that the 272-acre parcel is a discrete farm unit." *Id.*

DLCD relies on *Coos County* in its June 12th letter, yet the factual differences between *Coos County* and *Curry County*, and this case, render both decisions inapposite. In *Coos County*, LUBA ruled that the 175-acre parcel had been created by the owner as a cattle ranching farm unit, in accordance with a management plan, just six years prior to the rezoning application. By the landowner's own admission, the entire 175-acres had been created as a single management unit. Similarly, in *Curry County*, the landowner's 272-acre cattle grazing tract had been created



from a larger tract just two years earlier on the basis that the 272 acres was “a discrete farm unit.” Following the original property division, and in accordance with the management plan submitted by the landowner, the “entire tract” continued to be used for grazing.

Unlike either *Coos County* or *Curry County*, Mr. Grant’s 107-acre property was not created as a discrete farm unit or in accordance with a uniform management plan. Nor has he used the property for a single agricultural purpose. Instead, as illustrated in “Exhibit J” to Mr. Grant’s Land Use Application, Mr. Grant’s parents originally purchased the property as an investment. The 30-acres in question was not and never had been farmed either alone or in conjunction with the balance of the property. Soon thereafter, Mr. Grant leased the property from his parents for the purpose of creating a viable, profitable mint farm on the arable portion of the property. In accordance with that purpose Mr. Grant has profitably grown and sold the mint harvested on the property’s high quality soil.

Mr. Grant’s decision to plant donated filbert trees on the rocky portion of his land was a separate endeavor that recognized the natural differences on his property. From day one, Mr. Grant had separate crops, separate expectations, and separate uses for the two distinct tracks of land. His entire property was not carved out of an existing parcel to create one uniform, interdependent farm unit subject to a single management plan. Accordingly, neither *Coos County* nor *Curry County* controls the determination of whether the 30-acre subject tract is part of a larger “farm unit.”

The cases demonstrate that whether a tract of land is properly classified as a farm unit is a factual determination. *See, e.g., Riggs v. Douglas County*, 167 Or App 1, 8 (2000) (remanding the farm unit issue back to the county after noting that “further proceedings are necessary at the county level to identify the relevant facts.”); *see also DLCD v. Coos County*, 117 Or App 400, 405 (1992) (holding that the appellate court had “no authority to weigh evidence or find facts,” and thus could not review LUBA’s determination of whether the parcel was a farm unit). That probably also explains why there is no definition for a “farm unit.” Common sense suggests that the term be given its ordinary meaning, i.e. a parcel of land managed and operated as a unified, indivisible agricultural business.

The list of factors that should be considered in determining whether a tract of land is part of a farm unit includes the following:

1. Common ownership. *See Curry County*, 132 Or App at 398.
2. Historical use of each parcel, including whether the subject tract has ever been actively farmed. *See Brown v. Coos County*, 31 Or LUBA 142, 152 (1996); *Coos County*, 24 Or LUBA at 141; *Kaye v. Marion County*, 23 Or LUBA 452, 459 (1992).
3. Whether the subject parcel is an integral part of a uniform management plan. *See Curry County*, 28 Or LUBA at 207-09; *Coos County*, 24 Or LUBA at 140-43.
4. Whether the subject tract has ever been managed as an economically viable farming operation. *See Brown*, 31 Or LUBA at 151.

5. Whether identical or interrelated farming operations take place on the parcels in question. See *Curry County*, 28 Or LUBA at 207-09; *Coos County*, 24 Or LUBA at 140-43.
6. Whether the subject parcel functions operationally as part of a larger farming operation See *Brown*, 31 Or LUBA at 151.
7. Whether the subject parcel is "intermingled" with higher quality farmland. See *Curry County*, 132 Or App at 398; *Brown*, 31 Or LUBA at 152.
8. When and under what circumstances the landowner's entire parcel of land was created. See *Curry County*, 28 Or LUBA at 207-09; *Coos County*, 24 Or LUBA at 140-43.
9. Whether the subject tract could be utilized for agricultural uses other than those currently being conducted that would bring it within a farm unit. See *Brown*, 31 Or LUBA at 152.

1. *Common ownership.*

When deciding whether agricultural land and an adjacent tract are part of a single farm unit "common ownership is not determinative." *DLCD v. Curry County*, 132 Or App 393, 398 (1995). The mere fact that a historic, arbitrary boundary allocated two distinct pieces of land to one owner has no bearing on whether the land is a functional unit. There would be zero logic in concluding, for example, that Landowner X, who owns 200-acres of property that includes 175 acres of quality farmland and 25 acres of unfarmable land, could not develop those 25-acres because they are a "farm unit," while at the same time allowing development in a situation where Landowner X owns 175 acres of quality farmland and Landowner Y owns 25-acres of adjacent unfarmable land. *Curry County* recognizes that historic boundaries are not necessarily drawn in accordance with often widely varying differences in natural land characteristics. Accordingly, Mr. Grant's common ownership of his agricultural land and the subject tract is but one factor to considered in determining whether the property is part of a farm unit and is not controlling in itself.

2. *Historical use of each parcel, including whether the subject tract has ever been actively farmed.*

An analysis of Mr. Grant's property demonstrates that the subject tract was not historically farmed. Photographs attached as Exhibit "C" to Mr. Grant's application support this conclusion. The photographs depict the land as brush-covered when it was purchased in 1976. Obviously, the land was not being put to agricultural use at that time. In fact, the previous owners of the land, the Sneed family, had never used the 30-acres in question for agricultural purposes, although they had allowed their sheep to occasionally graze on the subject tract. In *Kaye v. Marion County*, 23 Or LUBA 452, 459 (1992), LUBA held that a 72.5-acre tract was not part of a farm unit where "a very few cattle and fewer horses" intermittently grazed on the land. Accordingly, this factor weighs against a finding that the subject tract is part of a larger "farm unit."

Although Mr. Grant made an effort to actively farm the subject tract, the Commission should consider the inequity of any decision that would penalize him for the extraordinary, albeit unsuccessful, effort he made to turn the historically unfarmed land on his property into a filbert

orchard. If Mr. Grant had never planted filbert trees but had instead left the subject tract barren, as many people advised him, the physical differences between Mr. Grant's two tracts of land would be even more pronounced than they are today and DLCD's "farm unit" argument would be absurd. Mr. Grant should not be penalized for his ambition. To do so would only discourage farmers from attempting to bring sub-standard acreage into productive use.

3. *Whether the subject parcel is an integral part of a uniform management plan.*

Unlike the properties examined in *Coos County* and *Curry County*, Mr. Grant's 30-acre tract has never been an integral part of a larger agricultural unit or management plan. In *Coos County*, the landowner submitted a land management plan outlining his proposal to use his entire 175-acre property to graze cattle. Similarly, the *Curry County* landowner submitted a land management plan outlining planned agricultural uses for his entire 272-acre tract. Mr. Grant has never had a land management plan that treated his property as a single unit. In fact, Mr. Grant's Land Use Application demonstrates that his property has never been used in a coordinated or unified manner. Accordingly, this factor weighs against a finding that the 30-acre subject tract is part of a larger "farm unit."

4. *Whether the subject tract has ever been managed as an economically viable farming operation.*

Neither Mr. Grant nor any previous owner of the subject tract has ever attempted to manage it as an economically viable farming operation. The financial records included as Exhibit "K" and Mr. Grant's statement in Exhibit "J" indicate that Mr. Grant has suffered a financial loss from his efforts to convert the unfarmable 30-acre subject tract into a filbert orchard. The only reason Mr. Grant has been able to continue farming is because of the income he earns from his mint crop. Included in Exhibit "U" is a letter from Garry Rodakowski, a knowledgeable filbert farmer, who explains that "the economics of orchard management prohibit the continued use of the [subject tract] as an orchard." Mr. Grant's Land Use Application demonstrates that managing the subject tract as an economically viable farming operation is untenable. Accordingly, this factor weighs against a finding that the subject tract is part of a larger farm unit.

5. *Whether identical or interrelated farming operations take place on the parcels in question.*

Mr. Grant does not conduct identical or interrelated farming operations on the parcels of land in question. In *Coos County* the landowner grazed cattle on his entire 175-acre parcel. Similarly, the court in *Curry County* noted that the landowner used his "entire tract" for grazing. As noted, Mr. Grant's high quality agricultural land was originally planted in mint, and has since been planted in sugar beets. In recognition of the natural differences on his land, Mr. Grant has never grown either of these crops on the subject tract. Instead, he has planted filbert trees believing that they were the only crop which might grow there. These two operations are neither identical or interrelated – Mr. Grant's present crop of sugar beets does not depend in any way on whether the subject tract is planted in filberts, lies fallow, or is developed. Accordingly, this factor weighs against a finding that the subject tract is part of a larger farm unit.

6. *Whether the subject parcel functions operationally as part of a larger farming operation*

The 30-acre subject tract does not function operationally as part of a larger farm unit. As discussed previously, rezoning the 30-acre tract on which Mr. Grant's house and barn are located will not adversely impact the farming operations on his agricultural land. Farmers in Lane County and elsewhere routinely work land when there are no nearby or adjacent structures.

Despite DLCD's argument, it would be counterintuitive to conclude that the 30-acre subject tract functions operationally as part of a larger farm unit simply because Mr. Grant's house and barn sit on the low quality, rocky soil of the subject tract. Any competent farmer knows to build his farm residence and barn on the poorest, least viable land possible. Certainly, a farmer would never want to build any structure on the portions of his property with the best soil. Yet, under DLCD's regulatory interpretation, the only way for Mr. Grant to avoid a finding that the 30-acre tract functions operationally as part of a larger farm unit would be to do just that. The county should be extremely reluctant to endorse a position that would encourage future construction of farm dwellings on what would otherwise be highly productive farmland.

Further evidence that the subject tract does not function operationally as part of a larger farming unit is the fundamentally different equipment that is used to farm row crops and filberts. While both require tractors, spraying, tilling and harvesting, the attachments necessary for each activity involve totally distinct pieces of equipment. Accordingly, this factor weighs against a finding that the subject tract is part of a larger farm unit.

7. *Whether the subject parcel is "intermingled" with higher quality farmland.*

The next pertinent factor examines whether the subject parcel is "intermingled" with higher quality farmland. The Court of Appeals described this as a determination of "whether land that is not of agricultural quality is interspersed with land that is." *DLCD v. Curry County*, 132 Or App 393, 398 (1995). While Mr. Grant's low quality land is intermingled to a certain extent with higher quality farmland, including the higher quality farmland on his own property, it is important to note that much of the surrounding land is not high quality farmland. In fact, as the photographs attached as Exhibit "B" indicate, all adjacent land to the North and West of the subject tract is residential property, not high quality farmland. It would be unreasonable to conclude that Mr. Grant's property is so intermingled with high quality farm land that it forms a cohesive farm unit when there are two subdivisions containing at least sixty-five houses within five hundred feet of the subject tract. Furthermore, the 30 acres is geographically separate and distinct from the remainder of his property. Accordingly, this factor weighs against a finding that the subject tract is part of a larger farm unit.

8. *When and under what circumstances the landowner's entire parcel of land was created.*

Pages two through four of this letter examine when and under what circumstances Mr. Grant's entire parcel of land was created, and contrasts those facts with *Coos County* and *Curry County*,

where the courts discussed at length the fact that the landowners had recently acknowledged that their parcels were discrete farming units. As noted, Mr. Grant's 112-acres of property was not recently partitioned from a larger tract of land to form a discrete farming unit. Accordingly, this factor weighs against a finding that the subject tract is part of a larger farm unit.

*9. Whether the subject tract could be utilized for agricultural uses other than those currently being conducted that would bring it within a farm unit.*

Mr. Grant's Land Use Application demonstrates that the subject tract could not be utilized for any other agricultural uses. Filbert trees are typically grown in low quality soil where row crops could never thrive. The fact that filbert trees are unable to be grown successfully on the 30-acre subject tract demonstrates that growing row crops on the land is beyond consideration. Exhibit "L" to Mr. Grant's Land Use Application analyzes the potential grazing capability of the subject tract. The analysis was written by Paul E. Day, an experienced agricultural consultant. Mr. Day notes that the low water holding capacity of the subject tract makes it "difficult to impossible" to establish forage plants on the property. Mr. Day concludes that due to the droughtiness imposed by extreme soil conditions, the lack of irrigation, and the significant investment needed to convert the land to grazing, it is unlikely that any prudent farmer would use the property for that purpose. Evidence was also presented at the hearing demonstrating that the land is unsuitable for timber production. Accordingly, this factor weighs against a finding that the subject tract is part of a larger farm unit.

The preceding discussion of relevant factors demonstrates that Mr. Grant's 30-acre subject tract is factually not part of a larger farm unit. Although this is certainly not a "slam dunk" conclusion, consideration of the facts for this particular application, in light of relevant case-law, favors such a conclusion. DLCD's letter argues that although the subject tract is "not the best farmland" it has been "used in conjunction with adjacent farmland and can continue to be so used." In this sentence, which is totally false, DLCD first admits that it is attempting to block the rezoning of inferior, sub-standard farmland, and then goes on to suggest that if Mr. Grant's application is denied by the county, he would for some unknown reason continue to work the unprofitable 30-acre subject tract. DLCD's conclusion is absurd in light of the stunted trees, broken equipment, and financial loss that Mr. Grant has to show for his 25-years of hard work.

The only viable option for the 30-acre subject tract is to allow small-scale development that is consistent with other property in the immediate surrounding area. Based on the facts presented here and in Mr. Grant's Land Use Application, the Commission should conclude that the subject tract is not part of a larger farm unit.

#### Conclusion

The 30-acre subject tract is not "agricultural land" under either OAR 660-033-0020(1)(a)(C) or (1)(b) because the tract is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural land and is not part of a larger farm unit. Arguments to the contrary from DLCD and 100 Friends of Oregon are unpersuasive because they do not take into account the

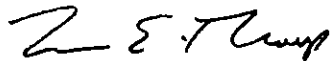
Application of David D. Grant/PA 01-5875

July 1, 2003

Page 9

fact specific nature of these inquiries. In addition, facts contained in Mr. Grant's Land Use Application, and further evidence presented to the Commission at the July 1st hearing, supports the conclusion that the subject tract is not "agricultural land" under either OAR 660-033-0020(1)(a)(A) or (1)(a)(B). Accordingly, the Commission should approve Mr. Grant's application.

Sincerely,

A handwritten signature in black ink, appearing to read "L. E. Thorp". The signature is written in a cursive style with a large initial "L" and a long horizontal stroke.

Laurence E. Thorp

# **ATTACHMENT SEPARATOR**

## MEMORANDUM

**DATE:** July 9, 2003

**TO:** Lane County Planning Commission

**FROM:** Thom Lanfear, Associate Planner *TL*

**RE:** PA 01-5875 Request for a Rural Comprehensive Plan (RCP) diagram amendment from "Agriculture" to "Nonresource", and a zoning map amendment from Exclusive Farm Use (E-30) to Rural Residential (RR-5) for a 30.19 acre site located south of McKenzie Highway 126 and the community of Walterville, pursuant to Lane Code (LC) 16.252 and LC 16.400.



LAND MANAGEMENT DIVISION  
[http://www.LaneCounty.org/PW\\_LMD/](http://www.LaneCounty.org/PW_LMD/)

Last week, five members of the Planning Commission heard testimony on agenda item PA 01-5875, and closed the public hearing. The Planning Commission scheduled deliberations on this item for the July 15, 2003 meeting. The record was left open for one week for additional written material from the applicant and persons wishing to respond to the applicant's submittal of July 1. That material is attached to this memo for your review. The record will be open until the meeting of July 15 for final rebuttal by the applicant. That material will be received at the meeting.

If you were not able to attend the July 1 hearing but would care to participate in the deliberations on this matter, copies of the tapes can be made available for your review by contacting Janey Barnes-Wiederhold at 682-3656. I can be reached at 682-4054. Thanks.

*BCC ATTCH. #4*







# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Main/Coastal Fax: (503) 378-6033

Director's/Rural Fax: (503) 378-5518

TGM/Urban Fax: (503) 378-2687

Web Address: <http://www.lcd.state.or.us>

July 8, 2003



Thom Lanfear, Senior Planner  
Land Management Division  
Lane County  
125 East 8<sup>th</sup> Avenue  
Eugene, Oregon 97401

RE: PA 01-5875 (application of David Grant)

Dear Mr. Lanfear:

The Department of Land Conservation and Development submits the following response to the new information submitted by the applicant and provided to the department on July 3<sup>rd</sup> regarding the department's June 12<sup>th</sup> letter of objection. After careful review, the department submits that the subject property is "agricultural land" under statewide goal 3 and continues to recommend that the county deny this application. For the reasons explained in this letter, the applicants proposed findings do not demonstrate that the subject parcel is not "agricultural land" as defined by goal 3.

### Predominant Soils

In response to our previous comments that the parcel is composed of predominantly Class I-IV soils, the applicant has submitted an additional memo from Mr. Kitzrow dated June 29, 2003. Unfortunately, it does not directly respond to our initial comments. The new memo discusses the level of detail in the NRCS maps versus the more specific information prepared for the applicant, how the "rubbly" portions of the parcel are "non-resource due to surface conditions NOT the soils themselves" and other information about the Sifton Variant soil type. However, this does not provide any additional analysis about why this soil type is not Class 3s as determined by the NRCS. The initial application and subsequent memo provides Mr. Kitzrow's expert opinion that the soils on this property are Class V or VI but it does not provide an analysis explaining, based on the specific criteria used by the NRCS to classify soils, that the soils should be reclassified to something other than what the NRCS soil survey has determined. Thus, it appears that the applicant's information supports a determination that the "soils themselves" remain properly classified but nevertheless should be considered as unsuitable for farm use because of the "rubbly" surface conditions. Even if the land is not considered good for farming or profitable to farm, if it is predominantly composed of Class I-IV soils, it is "agricultural land" under Goal 3.

Tom Lanfear

2

July 8, 2003

Further, OAR 660-033-0030(6) precludes using the "profitability or gross farm income" from a parcel when determining whether the land is "agricultural land" under goal 3.

We continue to submit that the information in the application and supplemental information is inconsistent with the official NRCS soils information for the Sifton soil unit. Until an analysis is provided using the NRCS soil classification criteria that shows that the Sifton soils on site are misclassified, they must be treated as the NRCS has classified them.

#### Farm Unit

The supplemental information includes a memorandum dated July 1, 2003 from Laurence Thorp that tries to explain how a 30-acre portion of a farm is not part of the "farm unit" as those terms are used in Goal 3. The memo provides much discussion about how the facts in this application are different from those in several court decisions and concludes, in part, that it is not a "slam dunk" that Mr. Grants's 30-acre parcel is not part of a larger farm unit. I concur. The department believes that it turns the facts on their head to suggest that a 30-acre parcel that is (1) in common ownership with adjacent farm parcels that are farmed by the same owner, and (2) that is the location of the same farmers homestead and barn and acts as the headquarters for the subject farm is somehow not part of the subject "farm unit" because it is poor farmland and in a different crop than the other lands farmed by Mr. Grant. The Commission has always considered lands farmed in common ownership as "agricultural land" under goal 3 (See Skreptos v. Jackson County, 1 LCDC 117 and on appeal Meyer v. Lord, 37 Or App 59, both (1978)).

The application involves a 30.19 acre parcel, which has been historically farmed by the applicant in conjunction with about 60 adjacent acres also in his ownership that surround the subject parcel on three sides. It is part of the applicant's farm and is agricultural land under Goal 3. As we stated previously, not all parts of a farm are productive. Nevertheless, to allow those portions of existing farms to be further subdivided is contrary to the longstanding policy contained in Goal 3. Such an interpretation will lead to countless portions of farms being eligible for subdivision and undermine the purpose of Goal 3.

Further, it remains the department's position that the subject tract is, as a matter of law, "within a farm unit" under OAR 660-33-020(1)(b) based on the county's approval of this 30 acre parcel in 1998, (See exhibit "G") long after it was acquired by the applicant. The creation of this parcel through a lot-line adjustment was consistent with the 30-acre minimum lot size for this zone. The 30-acre minimum lot size is one of the minimum lot sizes less than 80 acres approved under ORS 215.780(5). Thus the 30 acre size was approved as adequate for commercial agriculture under statewide goal 3 and ORS 215.780(2).

The whole purpose of these acknowledged provisions is to ensure that any new parcels are as large as the farm units in the area. Either by themselves or in conjunction with surrounding farm operations, new parcels must be "appropriate" for "commercial" agricultural use. Goal 3 and

Tom Lanfear

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July 8, 2003

ORS 215.263 only allow divisions of land in an EFU zone for either farm or nonfarm uses. In this case, the approved minimum was based on the standards for the creation of a parcel for farm use (see ORS 215.263(2)(a) and ORS 215.780(2)). Thus, a new farm parcel created under provisions acknowledged to comply with goal 3, is both suitable for farm use and a "farm unit."

If adjacent to or intermingled with soil classes I-IV as here, the parcel must be inventoried as "agricultural land" under goal 3.

#### Necessary Practices

Finally, the memorandum from Mr. Thorp does not answer the department's concerns regarding whether the tract is "necessary to permit farm practices on adjacent or nearby agricultural lands." The memo asserts, in part, that because neighboring farmers do not object to the subdivision of this property, that it is not "necessary to permit farm practices on adjacent or nearby agricultural lands" as this phrase is used in Goal 3. However, the supplemental information still does not explain how the subdivision and increased development on the subject 30-acre parcel will affect or possibly interfere with the continued farming on the remaining portions of the subject farm operated by the applicant. It also does not address how the removal of the subject farm's farmstead and headquarters will affect the operation of the farm.

The applicant also notes that it is commonplace for farmers in Lane County to work farmland not adjacent to their farms. The subject parcel is admittedly not the best farmland, however, it is a small parcel with an existing farm dwelling and barn and could be utilized by another farmer in the management of other non-adjacent farmland. As such, it should also be considered "agricultural land" under Goal 3 because it is needed to permit farming on nearby farmland because other farmers can use it for the management of their non-adjacent farmland.

If there could be interference to adjacent farm practices from development or the removal of the primary farm dwelling, as a result of approving this request, then the subject tract is "agricultural land" under goal 3.

#### Summary

Based on the information in the application and the supplemental information, the applicant has not provided findings or substantial evidence, which demonstrate that this tract is not agricultural land under goal 3 and OAR 660, Division 33.

Because the subject parcel clearly cannot be considered "nonresource" land under goal 3, the department recommends that the county deny this request. Please enter this letter into the record


Tom Lanfear

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July 8, 2003

of the proceedings and provide us a copy of your decision on this matter. If an additional opportunity is provided for the submittal of additional information, we ask that the hearing be continued, pursuant to ORS 197.763(4)(b), to allow us time to review and comment on the new information. If you have any questions, please contact me at 373-0050 ext. 247.

Sincerely,



Ronald Eber

Farm and Forest Lands Specialist

c: Rob Hallyburton, Community Service Manager, DLCD  
Lane County PA File (003-03)



**Booth Consulting, Inc.**  
 Bob Booth, State Certified General Appraiser,  
 Consulting Forester

Timber Cruises & Appraisals  
 Real Estate Appraisals  
 Value Consultations  
 Forest Management Planning  
 Log Marketing  
 Land Use Planning

**QUALIFICATIONS OF THE APPRAISER**

**ROBERT W. BOOTH**  
**BOOTH CONSULTING, INC.**

**CONSULTING FORESTER**  
**STATE CERTIFIED GENERAL APPRAISER #C000278**

**EMPLOYMENT BACKGROUND**

Robert W. Booth is President of the forestry consulting firm of BOOTH CONSULTING, INC. BOOTH APPRAISAL SERVICES is a dba of BOOTH CONSULTING, INC. Following an honorable discharge from the U.S. Navy in 1955, Mr. Booth attended Washington State University where he received a Bachelor's Degree. From 1959 to 1970 he worked for the U.S. Forest Service and served on five Ranger Districts and four National Forests within Washington and Oregon. During this eleven year period Mr. Booth was principally involved in timber sale appraisals in Western and Eastern Oregon. In 1972 he was employed by Publishers Paper Company (a Los Angeles Times Mirror Corporation) and was responsible for timberland acquisition and appraised timber, timberland, right of ways and trespass cases in Oregon and Washington. In 1988 Mr. Booth started his consulting forestry business, incorporating in October of 1990. In 1991, Mr. Booth became an Oregon State Certified General Appraiser and provides fee appraisals for forest land, vacant residential and commercial land, small offices, multiple family residential, and residential impacted farm and forest properties. BOOTH CONSULTING, INC. also continues to offer forestry consulting services.

**EDUCATIONAL BACKGROUND**

- Degree in Forestry and Range Management, Washington State University, 1959.
- Real Estate Appraisal 2, Clackamas Community College, winter 1973.
- Real Estate Exchange and Taxation, Clackamas Community College, winter 1974.
- Real Estate Law #414, Portland State U., spring 1977.
- Managerial Leadership #364, Portland State U., spring 1977.
- Real Estate Finance #437, Portland State U., summer 1978.
- Real Estate Practices #436, Portland State U., winter 1978.

Real Estate School Of Oregon, Competency certificate 1985,  
Licensed Realtor January of 1985.

Numerous in-service training courses sponsored by the U. S.  
Forest Service in timber cruising, log scaling, log  
grading, range land administration, timber land admin-  
istration, staff supervision, safety, and managerial  
leadership. (From 1959 to 1970)

Timber Cruising Short Course in Variable Plot cruising,  
Oregon State University, Jan 1965.

Aerial Photo Interpretation Short Course, Oregon State  
University, March 1965.

Microcomputers BA110, (Lotus 123) Lane Com. College, 1987.

SUPFRACE Timber cruising program license, fall 1990,  
Atterbury Consulting, Beaverton, OR.

Real Estate Principles IA-1 and Ethics and Standards,  
Appraisal Institute, Chicago, Illinois, 1991.

Timber Land Appraisal I and II, fall 1991, Duke University  
School of Forestry & Environmental Studies, Durham, NC.

Real Estate Appraisal I (RE 118 residential appraisal),  
spring 1992, Lane Community College, Eugene, Oregon.

Real Estate Brokers Training, Norm Webb School of Real  
Estate, Salem, Oregon. Licensed Broker with TMB Realty  
3-21-94.

Basic Income Capitalization (310), Appraisal Institute,  
Portland Oregon, September 11, 1993.

Standards of Professional Practices, Course #I410 (part A)  
March 6 & 7, 1995

Standards of Professional Practices, Course #II420 (part B)  
March 8 & 9, 1995

Technology Video-conference, October 12, 1995, Portland, OR

Litigation Skills for the Appraiser: An Overview, May 30,  
1997 Greater Oregon Chapter of the AI, Portland, OR

The Internet & Appraising, October 3, 1997, Greater Oregon  
Chapter of the AI, Newport, OR.

Wetlands & Their Relation to Residential, Commercial &  
Industrial Properties & the Mitigation Bank, July 16,  
1997, Eugene Sub-Chapter of the AI, Eugene, OR.

Non-Urban Properties Symposium: Wetlands Mitigation Banking;  
Submerged Lands (Houseboats, etc.); Appraisal Review;  
Government Controls on Private Land (conservation  
easements, etc.), November 21, 1997, PGP Seminars,  
Shilo Inn, Portland, OR

Highest & Best Use and Market Analysis (II520): September  
20, 1998, Marylhurst College, Marylhurst, OR

Oregon Department of Forestry Fish Passage Training &  
Hydrology, Springfield, Oregon, May 18, 1999. George  
Robison, Hydrologist.

Standards of Professional Practice, Part "C", Course 430,

November 18, 1999, Doubletree Hotel, Eugene, Oregon,  
 Instructor: Richard Herman, MAI, SRA  
 Certified Tree Farm Inspector, American Tree Farm System of  
 the American Forest Foundation, Lane County Extension  
 service, May 23, 2000  
 Real Estate Exchange & Taxation (1031 Tax Deferred Exchange)  
 RE 223, Lane Community College, Instructor: Robert W.  
 Nelson, CCIM (541) 686-8246. Winter term 2001.  
 Reviewed "Real Estate Valuation In Litigation by J. D.  
 Eaton, MAI, SRA (Second Edition), June 2001.  
 Appraising Manufactured Housing, Greater Oregon Chapter,  
 Appraisal Institute, Palm Harbor Manufactured Homes,  
 February 22, 2002.  
 Mark to Market Seminar, Lloyd Center, Portland, OR.  
 Historical Cost, Market Value Concept, & International  
 Convergence of Value Standards, March 28, 2002.

#### APPRAISAL EXPERIENCE

Real Estate Value Consultations  
 Timber and timber land fee appraisals  
 Farm fee appraisals (with and without residences &  
 outbuildings)  
 Timber only cruises and appraisals  
 Right of Way appraisals  
 Tax appeal appraisals  
 Property settlement appraisals  
 Trespass (fire, logging, and other encroachments)  
 Feasibility studies  
 Residential appraisal  
 Light Residential conversions to Office Commercial  
 Leased fee appraisals (offices)  
 Small and large Multiple Family Residential  
 Valuation for mediation  
 Zoning consultation; Land Use Planning; Lane County

#### REPRESENTATIVE APPRAISAL CLIENTS

Reich, Broughton & Associates, Inc. Residential Appraisers  
 Charles Larson, CPA  
 Countryman Realty and Assoc., Inc.  
 Bradley and Gordon, Attorneys  
 Michael A. Lewis, Attorney at Law, Eugene, OR 97401  
 John A. Wolf, Lawyers P.C., Ferry Lane, Eugene, OR 97440  
 Jacob K. Clifton, Jr., Attorney at Law, Eugene, OR 97401  
 Gleaves, Swearingen, Larsen, Potter, Scott & Smith,  
 Attorneys at Law, 975 Oak St. Eugene, OR 97401 (Laura  
 McDonald)  
 Diment & Walker, Attorneys at Law, 767 Willamette St., Ste.  
 #208, Eugene, OR 97401

Thomas H. Hoyt, Attor, 975 Oak St, Ste 700, Eugene, OR 97401  
 Doyle, Gartland, Nelson & McCleery, P.C., 44 Club Rd., Suite  
 #200, Eugene, OR 97401 (Doug Nelson)

Dole, Coalwell & Clark, Attorneys at Law, P.O. Box 1205,  
 Roseburg, OR 97470 (Steve Mountainspring 541-673-5511)

U. S. Marshal, 211 East 7th St, Eugene, OR 97401

U. S. Marshal, 620 Main St., Portland, OR 97205-3087

U. S. D. A. FARM SERVICE AGENCY

Lane County Waste Management, Ken Sandusky, (541) 682-4342

Fox Hollow Tree Farm LTD

Kurtz, Ford & Johnson, LLP, Attorneys at Law, (Bob Ford & Don  
 Johnson) 400 E 2<sup>nd</sup> Ave., St #101, Eugene, OR (541) 484-  
 1273

Stuntzner Engineering, Consulting foresters  
 Logging Engineering International, Consulting Forester  
 Zipp-O-Log Mills, Inc.

Linn-Benton Bank, Albany, OR

Siuslaw Valley Bank, 25 Gateway Blvd., Cottage Grove, OR  
 First Pac. Mortg., 450 Country Club Rd, Suite 200, Eugene,  
 Oregon

Pacific Continental Bank, 111 West 7th Street, Eugene, OR  
 Life Loans, 132 East Broadway, St 410, Eugene, OR (Jaun  
 Shedrick) (541) 684-9806

Southern Pacific Thrift & Loan Assoc., Lake Oswego, OR  
 State Farm Insurance Co.

Country Companies Insurance Co., 1190 Hwy 99 North, Eugene,  
 OR 97402

Wekselblatt, Mindy, 767 Willamette, Ste #204, Eugene 465-  
 3901

Numerous farmland & small woodland owners & investors

#### PROFESSIONAL ASSOCIATION MEMBERSHIPS

Oregon Realtors Association

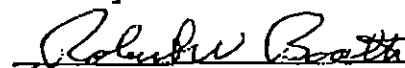
National Association of Realtors

Member of the Oregon Small Woodland Association

Member of RMLS (Multiple Listing Service); Portland, Douglas,  
 Coos, and Lane County areas.

#### COURT TESTIMONY

Mr. Booth has testified as an expert witness in forestry and real  
 estate valuation in several courts in the State of Oregon, as  
 well as before Lane County Planning Commission and the Lane  
 County Commissioners in regard to Land Use Planning applications.

  
 Robert W. Booth, Oregon State Certified  
 General Appraiser #C000278  
 (Expires 12-31-2003)

Date: July 2, 2003





**APPRAISER CERTIFICATION  
AND  
LICENSURE BOARD**

THIS CERTIFIES THAT THE PERSON NAMED HEREON IS LICENSED AS PROVIDED BY LAW AS A  
**State Certified General Appraiser**

**Robert W Booth**  
**BOOTH CONSULTING, INC.**  
3227 Queens E  
Eugene OR 97401

License No. **C000278**

ISSUE DATE  
1/1/2002

EXPIRATION DATE  
12/31/2003

A handwritten signature in black ink, appearing to read "Olika", is written over a horizontal dashed line.

ADMINISTRATOR

28 hours of continuing education required for renewal.

THORP  
PURDY  
JEWETT &  
URNES &  
WILKINSON, P.C.  
ATTORNEYS AT LAW

*Laurence E. Thorp*

July 8, 2003

1011 HARLOW ROAD, SUITE 300  
SPRINGFIELD, OREGON 97477  
PHONE: (541) 747-3354  
FAX: (541) 747-3367

E-MAIL ADDRESS:  
lthorp@thorp-purdy.com

MARVIN O. SANDERS (1912-1977)  
JACK B. LIVELY (1923-1979)  
JILL E. GOLDEN (1951-1991)

Thom Lanfear, Associate Planner  
Lane County Land Management Division  
125 East 8th Avenue  
Eugene, OR 97401

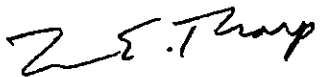
RE: Land Use Application of David D. Grant – PA-01-5875

Dear Mr. Lanfear:

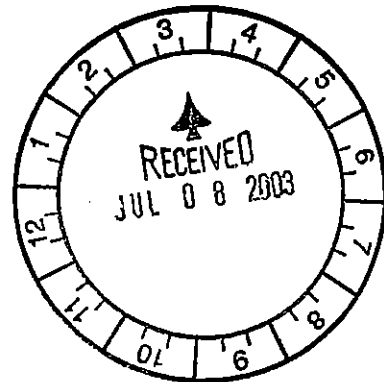
Attached are three additional documents to be entered into the application record.  
These materials include:

- 1) The affidavit of David D. Grant in support of his application.
- 2) The affidavit of Garry Rodakowski in support of the application.
- 3) A letter and supporting documentation from Gary A. Kitzrow, who conducted the soil surveys relied on in Mr. Grant's application. These materials describe the methodology used by Mr. Kitzrow in classifying the soil on the 30-acre subject tract as Class IV or worse.

Sincerely,



Laurence E. Thorp



**LANE COUNTY PLANNING COMMISSION**

**File No. PA-01-5875**

**Affidavit of David D. Grant**

**Application Description:**

**Owner**

Jack & Beverly Grant  
319 County Club Road  
Eugene, OR 97401

**Applicant**

David D. Grant  
39040 McKenzie Highway  
Springfield, OR 97478

**Agent**

Harry Taylor  
P.O. Box 1420  
Veneta, OR 97487

**Proposal:**

Application for Approval of a Minor Plan Amendment from Agricultural to Nonresource and a Zone Change from E-30 to RR-5 by the Planning Commission and Board.

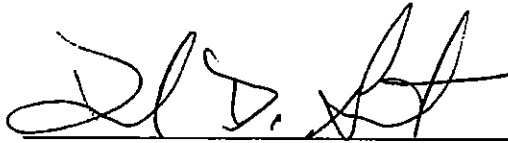
I, David D. Grant, being first duly sworn, say:

1. I make this affidavit in support of my Land Use Application (PA-01-5875), which was originally submitted on June 27, 2001. This statement is in addition to the summary of farming history for the property in question that was included as Exhibit "J" to my original Land Use Application.
2. In 1976 my parents, Jack & Beverly Grant, purchased an abandoned homestead along McKenzie Highway, near Walterville, Oregon, as an investment.
3. When purchased, the land was overgrown with brush and had never been plowed.
4. In 1976 I was working for Jack Sandgathe, a local farmer. Jack told me that if I raised mint on my parent's land, he would distill it for me. Jack came out and walked my parent's property and told me that the bottom ground was good quality soil and would support a mint crop. He also told me that the top ground was too rocky for growing mint. Based on this information and county soil maps indicating that the ground was acceptable for farming, I decided to make a go at it by raising mint on the higher quality, bottom portion of the property. At that time, I had no idea what I would do with the rocky portion of the land.
5. By 1978 I had already harvested my first mint crop, but I was still unsure what to do with the rocky portion of the property. At that time, a friend, Gary Rodakowski, offered to give me as many surplus hazelnut trees as I wanted. Gary owned a hazelnut nursery and gave me the trees at little or no cost.
6. Planting the hazelnut trees proved extremely difficult. The soil was so rocky that I was forced to use a rock picker and to pick rock by hand, over and over. After I planted the first five acres of hazelnuts, Gary Rodakowski advised me against planting any more

trees. Another local farmer, Rodney Chase, also advised me against further planting in the rocky soil. I decided to continue planting, however, because I was getting the trees for free and had no other use for the land.

7. I have never made any profit from farming hazelnuts on the 30-acre subject tract. The cost of fertilizer, chemicals, equipment, taxes, time and effort outweigh the small amount of income I have received from the trees. The trees are undersized and stressed. Many of them have died or are dying. I have already ceased harvesting a good portion of the subject tract because the rocky ground damaged equipment and made the harvest overly time consuming and unprofitable.
8. After 25-years of losing money in a failed attempt to farm the 30-acre subject tract I have concluded that it is pointless for me to continue. By now, numerous experts and consultants have explained to me that the subject tract is too rocky and the soil too poor to be used for agricultural purposes. Those opinions are confirmed by my experience.
9. Throughout the last 25-years I have profitably harvested mint from the higher quality farmland on my property. Recently, I switched my mint crop to sugar beets. The sugar beets have also been grown profitably. If my application is approved, I plan to continue farming on the higher quality soil. Rezoning or development of the 30-acre subject tract will not impact my other farming operations.
10. I recently learned from local long-time residents that before Walterville reservoir was created a year-round creek flowed through the middle of the 30-acre subject tract. The creek was wide enough for loggers to float logs down. The aerial photograph included as Exhibit "B" to my original Land Use Application clearly show the outline of this old stream. The presence of a large stream on the 30-acres explains the vast amount of rocks on the property: year after year the topsoil and dirt were washed away while more rocks were exposed.

DATED this 8th day of July, 2003.



David D. Grant

SUBSCRIBED AND SWORN to before me this 8th day of July, 2003 by David D. Grant



Notary Public for Oregon

My Commission Expires: 8-5-04

**LANE COUNTY PLANNING COMMISSION**

**File No. PA-01-5875**

**Affidavit of Garry Rodakowski**

**Application Description:**

**Owner**

Jack & Beverly Grant  
319 County Club Road  
Eugene, OR 97401

**Applicant**

David D. Grant  
39040 McKenzie Highway  
Springfield, OR 97478

**Agent**

Harry Taylor  
P.O. Box 1420  
Veneta, OR 97487

**Proposal:**

Application for Approval of a Minor Plan Amendment from Agricultural to Nonresource and a Zone Change from E-30 to RR-5 by the Planning Commission and Board.

I, Garry Rodakowski, being first duly sworn, say:

1. I make this affidavit in support of David D. Grant's Land Use Application (PA-01-5875). This statement supplements my letter describing Mr. Grant's efforts to farm hazelnuts that was included in Exhibit "U" of Mr. Grant's original Land Use Application.
2. I am president of Rodakowski Farms, Inc., and in that capacity I am responsible for managing 215 acres of hazelnut orchards in Lane County, Oregon. As indicated in the attached *Curriculum Vitae*, I have over thirty years experience in the hazelnut industry and have served on numerous industry commissions, including as past-president of the Oregon Hazelnut Commission.
3. I have lived near the property in question for much of the past forty years. I also have first-hand knowledge of Mr. Grant's efforts to grow hazelnut trees on his property. I have assisted Mr. Grant with harvesting his hazelnut crop and have personally examined the trees and soil conditions on Mr. Grant's land.
4. To my knowledge, the 30-acre tract of land Mr. Grant is seeking to rezone was not actively farmed prior to 1976. Before then, the Sneed family owned the land. When the property was purchased by the Grants in 1976, the 30-acre subject tract was covered in brush.
5. Soon after the Grants purchased the property in 1976, David Grant began planting the areas of highest quality soil in mint. At that time, he had no plans for cultivating the lower quality, rocky soil on the remaining portions of the property.
6. In 1978 I discussed with Mr. Grant the idea of planting the lower quality, rocky portions of his property with hazelnut trees, which I agreed to provide. Over the next several years, I supplied Mr. Grant with surplus hazelnut trees from my nursery. The trees were either

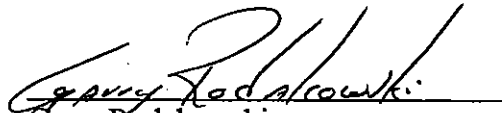
donated to Mr. Grant or sold to him at a steep discount. In my opinion, the planting was only done because Mr. Grant received the hazelnut trees essentially for free and had no costs other than his labor.

7. Beginning with the first hazelnut harvest on Mr. Grant's land, the rocky soil proved to be a significant problem. During harvest, hazelnuts are collected off the ground, using a mechanical rake and high-powered fan – neither of which distinguishes between rocks and nuts. (A more detailed description is included in my letter attached as Exhibit "U" to Mr. Grant's original application). Therefore, year after year, the harvest of Mr. Grant's hazelnut trees has included thousands of pounds of rocks. At times, rocks have comprised more than 50% of the harvested material. As a result, equipment has routinely been damaged. Mr. Grant has expended a significant amount of extra labor by rolling his orchard in an effort to deal with the problem. These efforts have proven unsuccessful and Mr. Grant has ceased his attempts to harvest hazelnuts on a good portion of the 30-acre subject tract.
8. In addition to the problems caused by rocks during the harvest, the rocky soil on Mr. Grant's land has resulted in stressed and stunted hazelnut trees. A number of the trees bear a distinct yellow color in their leaves while others show signs of disease. The result is that Mr. Grant's trees produce a quantity of nuts that are well below industry norms. I have personally observed these conditions during my visits to Mr. Grant's farm.
9. I am aware that 6 acres of the 30-acre subject tract have available water rights. In my expert opinion these water rights would not improve the farming potential of the subject tract. The sheer number of rocks on the subject tract means that the water would not be held by the soil, but would instead rapidly drain away. Any water that was held by the soil would still lack the necessary minerals and nutrients that are typically contained in high quality agricultural soil. The low productivity of the subject tract cannot be improved simply by "watering rocks."
10. It is my expert opinion, based on three decades of hazelnut farming and my personal knowledge of Mr. Grant's property, that the economics of orchard management prohibit the continued use of the site as an orchard. The original plan of putting the 30-acres into some kind of production has proven untenable. The 30-acre subject tract should never have been planted as an orchard.
11. In my opinion, it is common for landowners in Lane County and throughout the Willamette Valley to farm their property without having an on-site house, barn, or equipment storage shed. The mobility of modern farm equipment makes the presence of on-site or adjacent storage facilities unnecessary.
12. This conclusion is based on my thirty-years of experience as a farmer in Lane County. It is also supported by the fact that I presently farm land that I neither live on nor maintain a residence/storage facility on. Successful farming does not depend on on-site or adjacent structures for storing equipment or harvested crops. Fields which are farmed by one

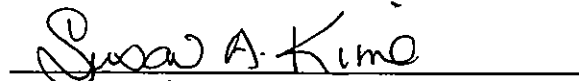
farmer are frequently miles apart. The concept of a single tract family farm on which the farmer lives and works is outdated and inconsistent with modern farming practices.

13. I do not believe that farming operations on Mr. Grant's productive acreage will be impacted if the 30-acre subject tract is rezoned or developed. I also do not believe farming the remainder of the Grant property will adversely impact residents who may live on five-acre parcels included in the 30-acre tract. This conclusion takes into account the fact that Mr. Grant's house and barn are located on the 30-acre subject tract.

DATED this 8th day of July, 2003.

  
Garry Rodakowski

SUBSCRIBED and SWORN to before me this 8th day of July, 2003 by Garry Rodakowski

  
Notary Public for Oregon  
My Commission Expires: 3-16-2007



## *Garry Rodakowski: WORK EXPERIENCE*

1994 to the present: Manage 80 acres of Hazelnuts on Dorris Ranch in Springfield for Willamalane Park & Recreation District.

1985 to the present: Manage 80 acres of Hazelnuts located in Mohawk, Oregon.

1985 to 1995: Worked as a licensed Guide in Oregon. Registration #647

1975 to the present: Own and operate 60 acres of Hazelnuts located in Vida, Oregon.

1971 to 1974: Worked heavy construction for S.D. Spencer & Sons of Vancouver, Washington.

1968 to 1972: Worked for Mayfair Markets in Springfield and Eugene.

## *COMMUNITY & INDUSTRY SERVICE*

2002 to 2005: Serving on the Board of Directors for Hazelnut Growers of Oregon Co-OP.

2002 to 2005: Serving on the Board of Directors for the State of Oregon Hazelnut Commission.

1989 to 1997: Serve on the Board of Directors for the McKenzie School District and served as Chairman for two years.

1995 : Hazelnut grower of the year in Oregon, Washington and British Columbia.

1990 to 1996 : Serve on the Board of Directors for the State of Oregon Hazelnut Commission and served as Chairman for two years .

1982 to 1992: Served on the Board of Directors for the USDA Hazelnut Marketing Board.

1986 to 1988: Served on the Board of Directors for the McKenzie Rural Fire Protection District.

1984 to 1987: Served on the Board of Directors of the Nut Growers Society of Oregon, Washington & British Columbia and was President in 1986.

1984 to 1987: Served on the Board of Directors of the Northwest Horticultural Congress and as President in 1986.



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# GROWING SOILS

Providing Quality Soils Information to  
Pacific Northwest Landowners Since 1979  
July 7, 2003

Larry Thorp  
Attorney at Law  
RE: David Grant Rezoning application

For points of clarification, below is a summary of how myself as a licensed and Certified Professional Soil Classifier and Soil Scientist has derived the Capability Class information for the above parcel. Enclosed is a 1977 NASIS Guide produced by the then USDA-SCS in Portland, Ore. This flow chart is a concise, excellent guide to determining the Capability Class of Oregon soils despite it's age. We have used this guide in 10 soil survey areas for which I have been responsible and in 6 different states. This chart is the standard for assigning Class.

The important facets in this chart for this parcel include the following: 1). The **surface soil texture**; if you follow down to Capability Class V-VII you will find one very important feature. Surface soil textures which are called very gravelly (GRV), very cobbly (CBV) and very stony (STV) modifier include rock contents in the upper topsoil 35 to 50% by volume (hence the name very cobbly etc. For Class VII soils, which have the modifier of extremely stony (STX) or extremely cobbly (CBX) (50 to 85% rock by volume), the same rule applies. This feature illustrates the importance of rock at or near the surface for any soil present. Note on this same chart, that in the Class V-VII category no reference whatsoever is made regarding what the actual soil texture is. It could be a loam, silty clay loam, loamy sand etc. However if it is an extremely cobbly loamy sand or silty clay loam at the surface, the soil automatically falls into Capability Class VII irrespective of the texture itself. The limiting factor here is the extremely cobbly or stony modifier which we use whenever the rock content in the soil exceeds 50% by volume. Likewise, for Capability Class V or VI assignment, the surface texture of very cobbly or very gravelly, or very stony supercedes the actual texture. It could be a loam, clay or silty clay, the point is moot. Conversely, in Capability Class I-III (typical Sifton soil series) then the soil texture itself is more important since the rock content is less than 35% by volume as connoted by the SICL (silty clay loam), SL (Sandy Loam) listed for example for Class I soils irrigated. In other words, the NRCS has stipulated that low amounts of rock at or near the surface facilitates good growing and farming conditions. High rock contents on the surface and in the topsoil and upper subsoil (>35% by volume) decrease severely the utility of the soil regardless of the amount of clay, drainage etc. This is a hallmark in agricultural research and is based upon over 100 years of yield data on soils with and without rocky surfaces. 2). **Soil Water Holding Capacity**- as stated previously in reports and verbal testimony, the water holding capacity over 2/3 of this subject parcel is very low. Referring to the same flow chart published 1977, under available water capacity, note that Capability Class V soils need at least 3.0 inches in the upper 60" Capability Class VI soils need at least 2.0 inches in that same volume. Due to the unusually high rock content in the upper 10 to 20" of most of the profiles examined and classified, our report stipulated that all of the rubbly areas and a majority of the rocky Sifton area (Sifton Variant) show water holding capacities of less than 2". Certainly, the vast majority of the study area shows less

Grant Pg. 2

than 3". There is no disputing that. Irrigated vs. non-irrigated becomes much less of an issue when the water holding is less than 3". This site is non-resource by this criteria alone. However when combined with the high rock contents in the upper portion of 2/3 of the acres of this study area the fact become unrefutable and absolute. 3). **Other features which help determine Capability Class.** Note the disparity between Capability Class I-IV soils and V-VIII soils. Nearly every category for V-VIII soils show "ANY" for such things as drainage class, erosion hazard and a variety of other factors. Conversely, Class I-IV soils show very specific guidelines in regards to virtually every facet which helps determine Capability. This is further proof that in deep or very deep soils (like the ones in this study area) surface rock and a lack of water holding capacity are the governing factors which control Capability assignment.

The other major reference source for ARCPACS Certified Professional Soil Classifiers to use in regards to assigning Capability Class is Part 622 of the National Soil Survey Handbook (NSSH). This document is part of the "bible" used by all Soil Taxonomists such as myself in regards to soil Classification and use and management applications of soil series information. On page 5 of this document in section 12 Part 622 explicitly states that hand cultivation and harvesting cannot be placed into Classes I-IV. Mechanical equipment cannot be effectively used where surface rock and incorporated rock preclude such factors. This is a hallmark in assigning the V-VIII Classes for very rocky soils at or near the surface. Page 8 of that same document shows Class V-VIII soils "Generally Not Suited to Cultivation. Class V soils show overland flow and nearly level stony or rocky soils fit this class. In regards to VII Class soils, feature 4 within the guidelines shows explicitly that stony soils are generally comprised in this group regardless of other features. According to Part 622, Class V and VII fit these areas where rubble is at the surface in conjunction with topsoil rock of high percentage (VII) and V where incorporated rock is noted in the surface texture (V). In either case these soils are non-resource according to DLCD /NRCS definitions since all of these areas fit Class V or VII.

In summary, removing the outbuildings and roads from the acreage tabulation, the acreage of rubbly Sifton and Sifton with high rock in the surface exceeds 60% of the subject property. This is a strong preponderance for Non-resource condition. We hereby reconfirm that this parcel is non-resource by preponderance of Capability Class V-VIII soils as prefaced above.



  
Gary A. Kitzrow, M.S.  
Certified Professional Soil Classifier/Soil Scientist