

United States Department of Agriculture
 Natural Resources Conservation Service
 Portland, Oregon

OR NASIS Guide 1

Revised June 1977

Guide for Placing Soils in Capability Classes in Oregon

Cap. Class. by Class	Depth Inches		Surface Soil Texture		Permeability within Effective Depth in/hr ¹	Max Slope % ²		Erosion Hazard	Available Water Capacity (in.) to 80 inches	Drainage Class	Overflow	Alkal. & Salinity ³	Frost Free Days ⁴	EIP ⁵ in ⁶	ET ⁷ Dry ⁸
	In.	ft.	In.	ft.		In.	Dry								
I	≥40	≥40	SL to SCL	Dry	0.2 - 0.0	≤3	≤3	None or Slight	≥7.5 ≥1.5 ft.	Well & Mod. Well	None to Rare	None	≥140	32 ⁹ 20	32 ⁹ 20
II	≥40	≥40	SL to SCL Gravelly		0.08 - 20.0	≤5	≤12	Moderate	25.0 ≥1.0 ft.	Somewhat Excessive to Somewhat Poorly	Occasional (1 in 10 yrs)	Slight 4-8	≥100	32 ⁹ 14	32 ⁹ 14
III	≥40	≥40	LS to CL organic, CB or GR		<0.08 - 20.0	5-8	≤20	High	≥3.75 ≥0.75 ft.	Excessive ¹⁰ to Poorly	Frequent (1 in 5 yrs)	None to 8-15	≥70	10	10
IV	≥10	≥20	S to C ST or GRV		<0.08 - >20.0	≤12	≤35	Any	≥2.5 ≥0.5 ft.	Excessive to Poorly	Frequent (1 in 5 yrs)	Severe >15	≥60	8	8
V	≥20	≥20	Any GRV, CBV, or STV		<0.08 - >20.0	≤3	≤3	None or Slight	≥3.0	Somewhat Excessive to Very Poorly	Very Frequent (each yr)	Slight <6	Any	4	10
VI	≥10	Any	Any GRV, CBV, or STV		Any	≤60	Any	Any	≥2.0	Any	Any	Any	Any	4	8
VII	Any	Any	Any CBX or STX		Any	≤90	Any	Any	Any	Any	Any	Any	Any	Any	2
VIII	Any	Any	Any		Any	Any	Any	Any	Any	Any	Any	Any	Any	Any	Any

¹ Permeability of the least permeable subsurface horizon.
² The irrigated column refers to surface irrigation systems. This column includes non-irrigated and sprinkler systems.
³ Available water between field capacity and wilting point.
⁴ All soil have exchangeable sodium in excess of 15 percent. Figures shown in this column indicate water classes by conductivity of the extract in millimhos per centimeter.
⁵ Temperature and Water Balance for Oregon Weather Stations. Special Report 150, May 1963. Oregon Agr. Exp. Sta. Columbia figures are minimums.
⁶ Units in inches with excessive cloud cover (precipitation in excess of 60 or 70 inches) excluding coastal terraces and coastal bottom lands and Class VI up to 60 percent slopes and Class VII above 80 percent slopes.
⁷ Depth to aquifer may be 30 or more.
⁸ Poorly drained when collected by ditches and pumped.
⁹ Depth to frezes may be 20 or more.
¹⁰ Very poorly drained when protected by ditches and pumped.
¹¹ All Cystofelis regardless of slope.
 Subsoils - the w, s, and a only on 0 to 3% slopes; the s above 3% slopes.

hazards or risks of soil or crop damage for long periods of time. Examples include establishing major drainage facilities, building levees or flood-retarding structures, providing water for irrigation, removing stones, or large-scale grading of gullied land. (Minor dams, terraces, or field conservation measures subject to change in their effectiveness in a short time are not included.)

10. Capability groupings are subject to change as new information about the behavior and responses of the soils becomes available.
11. Distance to market, kinds of roads, size and shape of the soil areas, locations within fields, skill or resources of individual operators, and other characteristics of land-ownership patterns are not criteria for capability groupings.
12. Soils with such physical limitations that common field crops can be cultivated and harvested only by hand are not placed in classes I, II, III, and IV. Some of these soils need drainage or stone removal, or both, before some kinds of machinery can be used. This does not imply that mechanical equipment cannot be used on some soils in capability classes V, VI, and VII.
13. Soils suited to cultivation are also suited to other uses such as pasture, range, forest, and wildlife. Some not suited to cultivation are suited to pasture, range, forest, or wildlife; others are suited only to pasture or range and wildlife; others only to forest and wildlife; and a few suited only to wildlife, recreation, and water-yielding uses. Groupings of soils for pasture, range, wildlife, or woodland may include soils from more than one capability class. Thus, to interpret soils for these uses, a grouping different from the capability classification is often necessary.
14. Research data, recorded observations, and experience are used as the bases for placing soils in capability units, subclasses, and classes. In areas where data on response of soils to management are lacking, soils are placed in capability groups by interpretation of soil characteristics and qualities in accord with the general principles about use and management developed for similar soils elsewhere.

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use because of high water table, slow permeability, and the hazard of salt or sodic accumulation. Each distinctive kind of soil in class III has one or more alternative combination of use and practices required for safe use, but the number of practical alternatives for average farmers is less than that for soils in class II.

Class IV -- Soils in class IV have very severe limitations that restrict the choice of plants, require very careful management, or both.

The restrictions in use for soils in class IV are greater than those in class III and the choice of plants is more limited. When these soils are cultivated, more careful management is required and conservation practices are more difficult to apply and maintain. Soils in class IV may be used for crops, pasture, woodland, range, or wildlife food and cover.

Soils in class IV may be well suited to only two or three of the common crops or the harvest produced may be low in relation to inputs over a long period of time. Use for cultivated crops is limited as a result of the effects of one or more permanent features such as (1) steep slopes, (2) severe susceptibility to water or wind erosion, (3) severe effects of past erosion, (4) shallow soils, (5) low moisture-holding capacity, (6) frequent overflows accompanied by severe crop damage, (7) excessive wetness with continuing hazard of waterlogging after drainage, (8) severe salinity or sodium, or (9) moderately adverse climate.

Many sloping soils in class IV in humid areas are suited to occasional but not regular cultivation. Some of the poorly drained, nearly level soils placed in class IV are not subject to erosion but are poorly suited to inter-tilled crops because of the time required for the soil to dry out in the spring and because of low productivity for cultivated crops. Some soils in class IV are well suited to one or more of the special crops, such as fruits and ornamental trees and shrubs, but this suitability itself is not sufficient to place a soil in class IV.

In subhumid and semiarid areas, soils in class IV may produce good yields of adapted cultivated crops during years of above average rainfall; low yields during years of average rainfall; and failures during years of below average rainfall. During the low rainfall years the soil must be protected even though there can be little or no expectancy of a marketable crop. Special treatments and practices to prevent soil blowing, conserve moisture, and maintain soil productivity are required. Sometimes crops must be planted or emergency tillage used for the primary purpose of maintaining the soil during years of low rainfall. These treatments must be applied more frequently or more intensively than on soils in class III.

Land Limited in Use -- Generally Not Suited to Cultivation ⁷

→ **Class V – Soils in class V have little or no erosion hazard but have other limitations impractical to remove that limit their use largely to pasture, range, woodland, or wildlife food and cover.**

Soils in class V have limitations that restrict the kind of plants that can be grown and that prevent normal tillage of cultivated crops. They are nearly level but some are wet, are frequently overflowed by streams, are stony, have climatic limitations, or have some combination of these limitations. Examples of class V are: (1) soils of the bottom lands subject to frequent overflow that prevents the normal production of cultivated crops, (2) nearly level soils with a growing season that prevents the normal production of cultivated crops, (3) level or nearly level stony or rocky soils, and (4) ponded areas where drainage for cultivated crops is not feasible but where soils are suitable for grasses or trees. Because of these limitations, cultivation of the common crops is not feasible but pastures can be improved and benefits from proper management can be expected.

Class VI – Soils in class VI have severe limitations that make them generally unsuited to cultivation and limit their use largely to pasture or range, woodland, or wildlife food and cover.

Physical conditions of soils placed in class VI are such that it is practical to apply range or pasture improvements, if needed, such as seeding, liming, fertilizing, and water control with contour furrows, drainage ditches, diversions, or water spreaders. Soils in class VI have continuing limitations that cannot be corrected, such as (1) steep slope, (2) severe erosion hazard, (3) effects of past erosion, (4) stoniness, (5) shallow rooting zone, (6) excessive wetness or overflow, (7) low moisture capacity, (8) salinity or sodium, or (9) severe climate. Because of one or more of these limitations, these soils are not generally suited to cultivated crops. But they may be used for pasture, range, woodland, or wildlife cover or for some combination of these.

Some soils in class VI can be safely used for the common crops provided unusually intensive management is used. Some of the soils in this class are also adapted to special crops such as sodded orchards, blueberries, or the like, requiring soil conditions unlike those demanded by the common crops. Depending upon soil features and local climate, the soils may be well or poorly suited to woodlands.

→ **Class VII -- Soils in class VII have very severe limitations that make them unsuited to cultivation and that restrict their use largely to grazing, woodland, or wildlife.**

Physical conditions of soils in class VII are such that it is impractical to apply such pasture or range improvements as seeding, liming, fertilizing, and water control with contour furrows, ditches, diversions, or water spreaders. Soil restrictions are more severe than those in class VI because of one or more continuing limitations that cannot be corrected, such as (1) very steep slopes, (2) erosion, (3) shallow soil,

(4) stones, (5) wet soil, (6) salts or sodium, (7) unfavorable climate, or (8) other limitations that make them unsuited to common cultivated crops. They can be used safely for grazing or woodland or wildlife food and cover or for some combination of these under proper management.

Depending upon the soil characteristics and local climate, soils in this class may be well or poorly suited to woodland. They are not suited to any of the common cultivated crops; in unusual instances, some soils in this class may be used for special crops under unusual management practices. Some areas of class VII may need seeding or planting to protect the soil and to prevent damage to adjoining areas.

Class VIII -- Soils and landforms in class VIII have limitations that preclude their use for commercial plant production and restrict their use to recreation, wildlife, or water supply or to esthetic purposes.

Soils and landforms in class VIII cannot be expected to return significant on-site benefits from management for crops, grasses, or trees, although benefits from wildlife use, watershed protection, or recreation may be possible.

Limitations that cannot be corrected may result from the effects of one or more of the following: (1) erosion or erosion hazard, (2) severe climate, (3) wet soil, (4) stones, (5) low moisture capacity, and (6) salinity or sodium.

Badlands, rock outcrop, sandy beaches, river wash, mine tailings, and other nearly barren lands are included in class VIII. It may be necessary to give protection and management for plant growth to soils and landforms in class VIII in order to protect other more valuable soils, to control water, or for wildlife or esthetic reasons.

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CAPABILITY SUBCLASSES

Subclasses are groups of capability units within classes that have the same kinds of dominant limitations for agricultural use as a result of soil and climate. Some soils are subject to erosion if they are not protected, while others are naturally wet and must be drained if crops are to be grown. Some soils are shallow or droughty or have other soil deficiencies. Still other soils occur in areas where climate limits their use. The four kinds of limitations recognized at the subclass level are: risks of erosion, designated by

ATTACHMENT SEPARATOR

July 14, 2003

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

Laurence E. Thorp

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

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

Dear Mr. Lanfear:

This letter responds to the Department of Land Conservation and Development's (DLCD) July 8th objection letter. DLCD's letter repeatedly misstates basic facts regarding Mr. Grant's application and fails to raise any new substantive issues. Despite DLCD's disingenuous arguments, substantial evidence clearly supports a finding that the 30-acre subject tract is non-agricultural land under goal 3 and the regulations contained in OAR 660-33-020(1)(a)-(b). In addition to this letter, Mr. Grant's original Land Use Application, the testimony in support of the application presented during the July 1st hearing, my previous letter of July 1st, and the supplemental information submitted to the record by Harry Taylor on July 1 and by me on July 8th support approval of Mr. Grant's application.

Soils on the 30-Acre Subject Tract are Non-resource

On July 8, 2003 Gary Kitzrow submitted a letter to the record thoroughly explaining the methodology used to classify the rubbly Sifton soil on the 30-acre subject tract as Capability Class V-VII. Mr. Kitzrow's letter and the authorities attached thereto directly address DLCD's concerns. The authorities relied on by Mr. Kitzrow include a chart entitled, "Guide for Placing Soils in Capability Classes in Oregon," which was produced by the Oregon office of the United States Department of Agriculture's Natural Resources Conservation Service, as well as excerpts from Part 622 of the National Soil Survey Handbook, also published by the Natural Resources Conservation Service and commonly referred to as the "Bible" of soil taxonomy.

The instruction provided by each of these NRCS publications is the same: areas of soil that are found to contain large amounts of rocks at the surface, in the topsoil, and in the upper subsoil based on *specific delineations* are to be classified as non-resource irrespective of the soil's classification in any *general scheme*. Mr. Kitzrow's letter analyzes in detail the application of these NRCS-prescribed methodologies to his soil classification of the 30-acre subject tract and need not be repeated here.

BCC ATTCH. #5

In sum, NRCS's original classification of the 30-acre subject tract was done using stereoscopic photo interpretation, not field identification. Mr. Kitzrow, a certified professional soil scientist, conducted an Order I soil survey using extensive on-site observations and backhoe exposures to collect information. He then relied upon criteria contained in two NRCS publications to reach a conclusion that the significant quantity of rock on the subject tract, as well as the tract's poor water holding capabilities, meant that the soil is properly classified as Class V-VII. Based on NRCS's own criteria, Mr. Kitzrow's specific classification prevails over NRCS's general classification scheme. The soil on the 30-acre subject tract is properly classified as Class V-VII and is therefore non-agricultural land under goal 3 and OAR 660-033-0020(1)(a).

The 30-Acre Subject Tract is Not Part of a Larger Farm Unit

The 30-acre subject tract is not part of a larger "farm unit." Unlike its June 12th letter, the "farm unit" portion of DLCD's July 8th letter fails to discuss this issue in the context of court decisions interpreting OAR 660-033-020(1)(b). Instead, DLCD references *Meyer v. Lord*, 37 Or App 59 (1978), an appellate decision that predates the current Goal 3 regulation. The fact that DLCD can only find support for its argument in a case that was decided before the current regulations were adopted and before creation of the Land Use Board of Appeals is a telling sign that Mr. Grant's 30-acre subject parcel does not meet the "farm unit" test under Oregon case-law interpreting OAR 660-033-020(1)(b). This is especially true given that *Meyer's* general holding on agricultural lands conflicts with *DLCD v. Curry County*, 132 Or App 393, 398 (1995), where the Oregon Court of Appeals stated flatly that when determining whether a subject parcel is part of a larger farm unit "common ownership is not determinative."

Even if *Meyer* dealt with the applicable regulations, the facts of that case are clearly distinguishable from the present issue. Unlike the property in *Meyer*, Mr. Grant's 30-acre subject tract has never been historically farmed – DLCD's misstatement of the facts notwithstanding. Further, the record also demonstrates that unlike the subject parcel in *Meyer*, the 30-acre subject parcel at issue here has never operationally functioned as part of a larger farm unit.

DLCD's conclusion that "the Commission has always considered lands farmed in common ownership as agricultural land" misses the point entirely: the Commission's opinion in other cases does not govern this issue; instead, the rules promulgated pursuant to goal 3 and case-law interpreting those rules govern the determination of whether a subject tract is part of a larger "farm unit." Relevant cases demonstrate that whether a parcel is part of a larger "farm unit" is a factual determination. See *Riggs v. Douglas County*, 167 Or App 1, 8 (2000); *DLCD v. Coos County*, 117 Or App 400, 405 (1992).

Facts in the record provide substantial evidence that Mr. Grant's 30-acre subject parcel is not a farm unit as that term is understood in numerous court decisions. Relevant facts supporting the conclusion that the 30-acre subject parcel is not part of a larger farm unit are that 1) the parcel has never been historically farmed, 2) the subject parcel is not an integral part of a uniform management plan, 3) the subject tract has never been managed as an economically viable

farming operation, 4) neither identical nor interrelated farming operations take place on the parcels in question, 5) the subject parcel does not function operationally as part of a larger farm unit, 6) the subject parcel is more intermingled with private residences than high quality farmland, and 7) the subject tract could not be utilized for other agricultural uses. *See generally Kaye v. Marion County*, 23 Or LUBA 452 (1992); *Brown v. Coos County*, 31 Or LUBA 142 (1996); *DLCD v. Coos County*, 24 Or LUBA 173, *aff'd*, 117 Or App 400, 405 (1992); *DLCD v. Curry County*, 28 Or LUBA 205 (1994), *aff'd*, 132 Or App 393.

DLCD's attempt to make an issue out of Mr. Grant's lot-line adjustment misses the point because there is simply no justification for declaring a parcel to be "agricultural land" based *solely* on its size, shape or location. Yet that is the conclusion DLCD asks the Commission to reach. Under this ill-conceived approach, every parcel of land in the state that is over 30-acres and was created through a lot-line adjustment would remain classified as "agricultural land" in perpetuity even if it was unirrigated, rocky, precipitously graded, Class VIII soil that had never been farmed, grazed or harvested. If size alone meant that unfarmable properties were required to be classified as agricultural land than a regulation to that effect would surely have been adopted. No such regulation exists.

The conclusion that the 30-acre subject parcel is not part of a larger farm unit is supported by substantial evidence and numerous court decisions.

The Subject Parcel is Not Necessary to Permit Farm Practices on Adjacent Agricultural Lands

Although the record is replete with evidence demonstrating that the subject parcel is not necessary to permit farm practices on adjacent or nearby agricultural lands, these materials apparently do not contain the magic words sought by DLCD. Like its earlier submission on this topic, the Department's July 8th letter continues to make uninformed assumptions that contradict the plain facts provided by individuals living on and near the subject parcel.

Mr. Grant's original Land Use Application repeatedly states that he will continue farm operations on his agricultural land if his rezoning application is approved, and that development on the 30-acre subject tract will not adversely affect his remaining farm operations. *See, e.g.*, pages 7, 8, 9, and Exhibit "J." Mr. Grant again reiterates these facts in his July 8th affidavit, concluding, "Rezoning or development of the 30-acre subject tract will not impact my other farming operations."

From their offices in downtown Salem DLCD officials remain convinced that the location of Mr. Grant's barn and house on the 30-acre subject tract is proof enough that the subject parcel is necessary to permit farm practices on Mr. Grant's adjacent property. That conclusion flies in the face of real-world farming practices. As explained in the July 8th affidavit of Garry Rodakowski, the mobility of modern farm equipment makes the presence of on-site or adjacent facilities unnecessary for successful farming. Mr. Rodakowski states that the lack of on-site or adjacent farm houses, barns, or equipment sheds is commonplace throughout the Willamette Valley. The obvious conclusion is that farm practices, including those performed by Mr. Grant, do not depend on maintaining on-site or adjacent structures for storing equipment or harvesting

July 14, 2003

crops. Accordingly, Mr. Grant's ongoing farm operations will not be interfered with if his zoning application is approved.

DLCD claims that because "another farmer" could possibly utilize Mr. Grant's existing house and barn to manage other non-adjacent farmlands, the property must be classified as "agricultural land." Under DLCD's imaginative interpretation of the law every piece of land in the entire state with a habitable residence or storage shed could be classified as agricultural land simply because a farmer could reside there or store equipment on the property. The Commission should be hesitant to adopt such a sweeping and unfounded position. The position is also inconsistent with its argument that the 30 acre parcel is part of a farm unit because it is adjacent to the 60 acres Mr. Grant Farms.

Mr. Grant is a professional, full-time farmer whose livelihood depends on the continued profitable use of his higher quality agricultural lands. It is naive for DLCD to insinuate that Mr. Grant would intentionally jeopardize the productive farm operation to which he dedicated his entire adult life by initiating development that would interfere with those practices. Mr. Grant has successfully farmed mint and sugar beets on his higher quality agricultural land for a quarter century without regard to the condition of the 30-acre subject tract. Despite DLCD's arguments to the contrary, the two tracts will not suddenly become interdependent properties if the re-zoning application is approved. The two tracts are functionally separated from each other and development on the 30-acre parcel will not interfere with Mr. Grant's continued farming operations on his higher quality agricultural land.

Substantial evidence is in the record which supports a conclusion that the 30-acre subject tract is not necessary to permit farm practices on adjacent or nearby agricultural lands.

Conclusion

The facts in the record demonstrate that Mr. Grant's 30-acre subject parcel is not "agricultural land" under goal 3 or the regulations contained in OAR 660-33-020(1)(a)-(b). Accordingly, the Planning Commission should approve Mr. Grant's application.

Very truly yours,

THORP, PURDY, JEWETT,
URNESS & WILKINSON, P.C.



Laurence E. Thorp

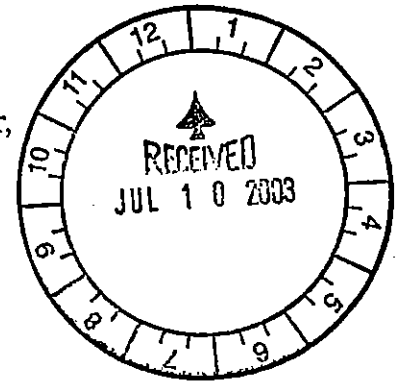
LET:mkf

cc: to client



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.

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

Real Estate Principles 1A-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 IMB 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



**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
EugeneOR 97401**

License No. C000278

**ISSUE DATE
1/1/2002**

**EXPIRATION DATE
12/31/2003**

ADMINISTRATOR

28 hours of continuing education required for renewal.

MINUTES

Lane County Planning Commission
BCC Conference Room - Lane County Courthouse

July 1, 2003
5:30 p.m.

PRESENT: Mark Herbert, Vincent Martorello, Juanita Kirkham, Jacque Betz, Marion Esty, members;
Kent Howe, Bill Sage, staff.

ABSENT: Chris Clemow, Don Clarke, Steve Dignam, Robert Collin, members.

I. APPROVAL OF FEBRUARY 18, AND MAY 20, 2003, MINUTES

Mr. Herbert convened the meeting.

Mr. Martorello, seconded by Ms. Esty, moved to approve the minutes of February 18, and May 20, 2003, as submitted. The motion passed unanimously.

II. LONG RANGE PLANNING WORK PROGRAM

Mr. Howe distributed a list of Rural Comprehensive Plan Long Range Projects. He asked for feedback from the commission as to which projects should be addressed. He noted that e-Government access was a high priority, as well as the list of Metro Plan long-range projects.

Mr. Howe said there would be three planners would be allocated to the list of projects. He said the first five items on the list would be addressed by Mr. Sage. He expressed a desire to leave .5 FTE for unforeseen work that would need to be done. He said items 6 -20 would need a full FTE to be addressed.

In response to a question from Mr. Herbert regarding the .2 FTE assigned to the Natural Resources Study, Mr. Howe said the time allotted was to address the move to the Safe Harbor approach. He said the resource would be dedicated to process only. He added that the same was true for item 2 under Metro Plan long-range projects.

In response to a question from Ms. Esty regarding whether the Lane Library Special District would still be on the ballot in 2004, Mr. Howe said it was now on the ballot for 2006.

In response to a question from Mr. Martorello regarding item 6 and what the expected end result would be, Mr. Howe said option A. was to make a legal lot determination would be a land use decision that would need to have public notice provided if there had been a property line adjustment in the past. He said Option B was to have more of a comprehensive policy discussion and possibly make additional policy revisions.

Mr. Herbert commented that resources should be allocated to items that had more pressing time urgency.

Mr. Howe outlined the items on the list and called for questions/feedback from the commission on any of the items.

BCC ATTCH # 6

Mr. Howe noted that the “Rapidly Moving Landslide Hazard Areas” (Item 19) did not have to be addressed until the remapping had been completed.

In response to a question from Ms. Betz regarding how many people would be hired, Mr. Howe said two planners would be hired as well as a land management technician.

In response to a question from Mr. Martorello regarding funding for the projects, Mr. Howe identified funding sources for the projects:

- The long-range planning surcharge on all building and planning applications
- Video lottery dollars
- The Title III funding from the current application process
- Recording fees for subdivisions and partitions

In response to a question from Ms. Kirkham regarding whether a land management technician could work on items 1 -20 on the list or whether it would have to be a planner, Mr. Howe said there were aspects of the items that the land management technician would help with.

Mr. Herbert called for input from the commission on priorities for items.

Ms. Herbert cited 8,9,13, and 15. She also expressed an interest in item 10.

Mr. Martorello said his preference was to target items that had wider reaching effects for the County.

Ms. Betz and Ms. Esty said they were comfortable with staff making the priorities. Ms. Esty said staff would know better which items needed to be addressed in the most urgent manner.

Mr. Herbert cited numbers 9, 12, 14, and 15. He stressed the importance of addressing number 9. He stressed that the numbers were personal preferences and not direction to staff.

Mr. Howe said a recommendation from the commission on items that it definitely wanted to address would be helpful for him.

Ms. Esty suggested everyone taking the list home and sending priorities to Mr. Howe.

Mr. Howe said the commission should choose from items 6 -20.

Mr. Martorello expressed his desire to recommend priority items that evening. He said that members who were not present and had problems with the recommendation could bring up their concerns at a later date.

Mr. Martorello cited 14, 9, 8, 15, 19, and 6.

Ms. Esty cited 7, 8, 14, and 15.

Mr. Martorello stressed the importance of addressing items that addressed code language/revisions rather than studies.

Ms. Esty, seconded by Mr. Martorello, moved to submit the preferences cited by the commissioners that evening to the board. The motion passed unanimously.

In response to a question from Mr. Martorello regarding when hiring would be done, Mr. Howe said one of the Planner positions would be hired as soon as possible, with the other Planner and Land Management Technician positions being filled after the close of the Legislature when the County know what it receive in terms of the Video Lottery allocation from the State.

Mr. Howe said staff would come back before the commission with a revised list once the Board of County Commissioners had taken some action.

The meeting adjourned at 6:40 p.m.

(Recorded by Joe Sams)

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MINUTES

Lane County Planning Commission
Harris Hall - Lane County Courthouse

July 1, 2003
7 p.m.

PRESENT: Mark Herbert, Vincent Martorello, Juanita Kirkham, Jacque Betz, , Marion Esty, members;
Kent Howe, Jerry Kendall, Thom Lanfear, staff.

ABSENT: Chris Clemow, Steve Dignam, Don Clarke, Robert Collin, members.

- I. PUBLIC HEARING: PA 03-5277, to co-adopt an amendment to the Coburg Comprehensive Plan to include a 51 + acre lot and adjacent ODOT right-of-way into the Urban Growth Boundary, to remove the property from the jurisdiction of the Rural Comprehensive, and to change the plan designation of the land from "Agricultural" to "Public Recreation, Open Space" and the zoning of the property from E-40/Exclusive farm use to PR/Public Reserve. Map 16-03-28/Tax Lot 200 & 403 & adjacent right-of-way on the western half of Interstate 5. Applicant: City of Coburg**

Mr. Herbert opened the public hearing.

Mr. Kendall provided the staff report. He said the subject property was approximately 50 acres in size. He noted that no written testimony had been received. He read the approval criteria for the application into the record. He said the proposal was backed by the City of Coburg. He said staff recommended approval of the application.

In response to a question from Mr. Martorello regarding Goal 3, Mr. Kendall said State Goal 2 said that the process be followed without actually taking an exception.

Gary Darnielle, Lane Council of Governments, spoke as the applicant's representative. He stressed the need for the installation of sanitary sewers in the City of Coburg. He said studies had identified nitrate deposits in the ground water around the City due to ground water contamination. He said he expected DQC as a groundwater management area. He said the City was concerned that the groundwater sources nearby would be polluted. He stressed the importance of public need for the sewage treatment facility. He said reliance on septic tanks had made serious development almost impossible.

In response to a question from Mr. Martorello regarding existing wetlands on the site and how it related to the treatment lagoons, Mr. Darnielle said there were some ponds on the site. He said there was enough room for the lagoons to meet the current population of Coburg but opined that a future site would need to be identified to handle future development.

In response to a question from Ms. Esty regarding population growth projections had been done, Mr. Darnielle said Coburg was doing a buildable land inventory and were involved in a design charette process. He said the tentative estimate was growth of 3,000 people over 20 years.

Mr. Herbert closed the public hearing.

Ms. Betz said she would have no problem approving the application.

Mr. Martorello said he would also support the application but raised concern over just building for current need and not future need.

Ms. Esty reiterated the concern of Mr. Martorello and commented that the growth projections could be underestimating the actual growth.

Mr. Martorello, seconded by Ms. Esty, moved to co-adopt the amendment to the Coburg Comprehensive Plan to include a 51+ acre lot in adjacent Oregon Department of Transportation right-of-way in the Urban Growth Boundary. To remove the property from the jurisdiction of the Rural Comprehensive Plan and to change the plan designation of the land from Agricultural to Public Recreation/Open Space, and the zoning of the property from E-40/Exclusive Farm Use to PR/Public Reserve. The motion passed unanimously.

II. PUBLIC HEARING: PA 02-6010, In the matter of co-adopting an amendment to the City of Creswell Comprehensive Plan map to expand the Urban Growth Boundary to include the subject property & redesignate that property from "Airport" to "Public Lands", and from "Public Lands" and from "Airport Operations AO/RCP" to "Airport Operations AO/UGB" (Applicant: City of Creswell)

Mr. Kendall provided the staff report. He said the intent of the City of Creswell was to annex the subject property but noted that this was not included in the action requested that evening. He said the buildup of hangar facilities had prompted the Fire Marshal to direct that the water supply be increased by at least 1,500 gallons per minute of water, over a two-hour period, and provide that flow by June of 2006. He said that the urban growth boundary needed to be extended around the land so urban services could be extended to the site. He noted that two letters expressing concern over growth of the airport and the service of larger planes at airport facilities had been received. He said the City of Creswell had approved the action and noted that the County needed to co-approve the application for the work to be implemented.

Mr. Kendall read the approval criteria for the application into the record.

Mr. Kendall stressed that Goal 14 required that there be a demonstrated need to accommodate long-range urban population requirements for an urban growth boundary to be expended. He said the City of Creswell's response was that the factors were not applicable because there was no change in use in the proposed facility. He noted that City of Creswell policy prohibited supplying city water to properties outside of the City limits and said the City could revise its standards to comply with State Goal 11 and could extend water service to the airport without expanding the Urban Growth Boundary. He noted that the Eugene Airport received city water and was not within Eugene's UGB. He said the City of Creswell had not conclusively demonstrated a need for expansion of its UGB. He said city water could be extended by Goal 11 provision and added that the City's own lands needs analysis did not cite the need for additional public lands through 2021. He said staff recommended denial of the application.

In response to a question from Mr. Martorello regarding the potential of economic/environmental impacts if intensified use, Mr. Kendall said there needed to be a demonstrated need to expand an urban growth boundary and said that the applicants had anticipated no changes in the status quo so there was no demonstrated need for expansion.

Mr. Herbert opened the public hearing. He called for testimony from the applicant.

Milo Mecham, Lane Council of Governments, spoke representing the City of Creswell. He said the City of Creswell had demonstrated the need for the UGB extension. He said the provisions of Lane Code recognized need and stressed that there were changed circumstances since new hangars had been put in and the current water supply of the airport was not adequate to meet fire suppression needs. He said fire suppression was a need recognized in Lane Code and the local Rural Comprehensive Plan as a demonstrated need.

Regarding statewide planning goals, Mr. Mecham said the factors in Goal 14 needed to be considered but were not driving criteria for approval. He said there was an important distinction between this proposed extension of the UGB and the earlier one. He said the need for extension of the UGB came from outside the City rather than being driven by city population and development growth. He said the reason for the zone change was due to the need to provide an adequate supply of water to a facility owned by the City of Creswell.

Mr. Mecham said water services could not be extended beyond the Creswell UGB by Lane County and City of Creswell agreement. He said the airport needed increased water service in order to increase the efficient use of the site. He said there was no agricultural land involved in the application. He said compatibility with the nearby agricultural uses was proven because the airport had been operating next to agricultural land for years.

Regarding OAR 660.065 allowing the extension of a water system into a rural area, Mr. Mecham said the rule was addressing service to water systems outside of an urban growth boundary. He said the rule did not apply to the extension of water service to an airport.

In response to a question from Ms. Betz regarding whether the only way of providing water was extending the UGB of Creswell, Mr. Mecham said the City system was the only thing capable of delivering the required water flow for fire suppression.

In response to a question from Mr. Martorello regarding the statement that population growth would not affect the airport, Mr. Mecham said the buildable lands analysis indicated there were no projections of economic or population growth were dependant on or determined by the airport so it was not regarded as a significant driver of economic or population growth.

Linda James, Creswell City Administrator, referred to the overhead map of the airport and the UGB expansion. She said the City of Creswell had owned the airport since 1963 and, in some respects; the application was to correct an error in not including the facility in the UGB at that time.

Ms. James said Creswell was not the City of Eugene and did not extend water service beyond its UGB. She said the City believed very strongly in its comprehensive plan, which said that water service would not be extended beyond its UGB boundaries. She said the resolution passed in 1992 by the City was very firm in saying that. She said if the City extended water service to its property beyond the UGB and refused to do so for others it would not be consistent with its own policy.

Ms. James cited submitted a resolution passed by the Lane County Board of Commissioners in 1983 regarding the expansion plans of the Creswell airport indicating that Creswell Airport was free to expand its runway and facilities to serve as a general aviation airport. She read the resolution into the record.

In response to a question from Mr. Martorello regarding that the only way to deliver enough water to the airport was expansion of the UGB, Ms. James confirmed that this was true. She said the Fire Marshal had required 1,500 gallon per minute water flow, which could not be met by underground wells.

In response to a question from Mr. Martorello regarding whether the Federal Aviation Administration had gotten involved in the issue, Ms. James said its only input was that the City should turn down any funding to expand development of the airport because of the lack of sufficient water to meet the fire suppression requirement.

In response to a question from Ms. Esty regarding the availability of fire insurance since the fire suppression was not adequate, Ms. James confirmed the difficulty of businesses at the airport because of lack of water for fire suppression. She added that there were no plans to expand the width of the runway to accommodate larger planes.

In response to a question from Ms. Esty regarding increases in flight education requests, Ms. James said, as population grew, flight education activities would increase.

In response to a question from Mr. Herbert regarding the option of changing the comprehensive plan to allow water service to the airport, Ms. James said that was an option but noted that the City resolution applied to everyone and expressed concern over the City taking care of its own needs and disallowing others to do the same.

Mayor Ron Petitee said the airport had always been a part of Creswell and noted that it was featured in the City logo. He said the local City Council would not be in favor of changing the comprehensive plan to allow water service to the airport. He remarked that the city was a small one with limited resources and needed to be very prudent in how water services were expanded.

In response to a question from Mr. Martorello regarding the 1983 resolution to expand the airport and whether the airport had expanded to meet that resolution, Mayor Petitee said the airport had expanded but needed the desired water to finish that development.

In response to a question from Ms. Kirkham regarding the definition of development at the airport, Mayor Petitee said there was a master plan for the airport that showed runways, taxiways, hangars, etc.

Darren Humble said he owned a business at the airport that he wanted to expand but could not because of the restrictions of development at the airport due to lack of enough water for fire suppression. He said it was currently cost prohibitive because of lack of city services.

Richard Jeffries said planning staff had taken an overly narrow view in that water could be extended without inclusion of the airport into the UGB. He said the airport was unique and was not what was being considered when the goals mentioned by staff were created.

Irbin Moore, Eugene Skydivers, stressed the need for water at the airport. He said it was a good idea to provide that water service at the airport by any means possible.

Nina Lovenger, 40093 Little Fall Creek Road, urged denial of the request. She said the need for extension of the UGB had not been demonstrated by the City of Creswell. She raised concern over increases in noise and airport use if the service were provided. She raised concern over loss of property values if the airport

capacity increased. She reiterated that there was no demonstrated need to include the airport in Creswell's UGB.

Merrill Cary, 82929 Brookhurst, reiterated the concerns of Ms. Lovenger. He said he would have to move if any more activity increased at the airport.

Robert Emmans, 40093 Little Fall Creek Road, Fall Creek, offered comments as President of Land Watch Lane County. He said the group concurred with staff that the airport did not meet the criteria for annexation into the urban growth boundary and commended staff for its recommendation of denial. He opined that the undeniable intent of the intended annexation was to facilitate the expansion of the airport. He said City water would be a catalyst for expansion of the airport. He said an expanded airport would further degrade the local rural environment while decreasing property values. He urged denial of the application. He offered, as an alternative, extended water service to the airport with a contract that it would go to serve existing facilities.

Jozef Zdzienicki, 1025 Taylor Street, Eugene, said he was opposed to the UGB extension. He opined that the City of Creswell was "passing the buck" to the Lane County Planning Commission and the County to make a decision so it would not have to pay for staff time. He noted that the airport was owned by the City of Creswell and water service was already extended to property adjacent to the airport. He said the matter was something that the City of Creswell needed to take care of by itself

David Collidur, 34606 East Cloverdale Road, raised concern over safety in the properties adjacent to the airport. He said the Creswell airport had one of the worst safety records in western Oregon.

Bob Meyers, 82701 South Bradford Road, said the City of Creswell had acted arrogantly in not controlling excessive noise and menacing aircraft activity from the Creswell airport. He said the current mayor had said that people who did not like the noise from the airport could just go indoors. He urged denial of the request.

Dorothy Schick, 3565 Mill Street, spoke as a business owner at the Creswell Airport. She spoke in support of the application and said she had invested heavily in the airport and stressed the difficulty of getting that investment when water was not available. She said the request was not about noise or airspace but about getting basic water services provided by the City.

Beth Bartel, 82675 Sears Road, spoke in support of the request. She said airport operations were not the question to be addressed at the public hearing. She said the issue was about making the airport safe by providing enough water for fire suppression.

Jacklyn Bololo, 80863 Turkey Run Road, noted that she had submitted written testimony. She said airports affected properties around them environmentally, economically, and developmentally. She said she had spoken with farmers who had not been allowed to place certain types of roofs on their properties because of airport regulations. She raised concern over the unchecked residential development around the airport and possible safety issues because of that. She urged denial of the application.

Linda Flieschly, 34977 Meadow Lane, raised concern over noise and pollution if the airport were to expand. She urged denial of the application.

Greg McKermick raised concern over airport expansion. He called for public hearings on all projects related to airport expansion.

Jerry Greas, 83029 Dale Koony Road, said he supported the extension of the UGB and the expansion of the airport.

Josh Stewart said he had moved to Creswell because of the airport. He stressed the importance of providing water to the facility. He said adding water to the facility would not affect the noise level of the airport.

Jennifer Jacobson, 38324 Penger Road, Fall Creek, said the noise level from the Creswell airport was intolerable. She said there were aerobatic stunt flying and instructional flights over her home. She said the noise level was tied to the current issue. She urged denial of the application.

In response to a question from Mr. Martorello regarding alternatives to city water lines, Mr. Kendall said the chief had noted that alternative methods were prohibitively expensive.

Mr. Mecham said the Fire Marshal felt the only satisfactory way to get the desired water was extension of the UGB. He also said the only realistic way to get the water was to expand the UGB. He noted that the concerns raised by much of the opposition, though important, did not address the criteria that had to be considered by the Planning Commission. He said the supply of water to the airport would not affect that situation "what-so-ever." He stressed the need for water service at the airport for fire suppression.

In response to a question from Mr. Herbert regarding a resolution document that had stated the City Council intent to supply public water to the airport, Mr. Mecham said that action was the beginning of the process of extending to the UGB.

Mr. Mecham requested that the commission adopt a motion to submit the matter to the Lane County Board of Commissioners with a recommendation that the Creswell's urban growth boundary be expanded for the reasons cited in the application.

In response to a question from Mr. Herbert regarding the scope and intent of the application, Mr. Kendall said the application was to extend the UGB of the City of Creswell so it could be connected to the public water system.

Mr. Herbert said the appropriate use of air traffic was not within the jurisdiction of the Planning Commission. He said the question was whether the City of Creswell had met the burden of proof and demonstrated a need to extend its urban growth boundary.

Mr. Kendall said, for the purposes of further research, he would like to keep the record open until the return of legal counsel to see if the City could extend water to the airport without extending the urban growth boundary. He said he could schedule the matter for the next commission meeting on August 19, 2003.

Mr. Herbert said it would be unfair to the applicant to wait three weeks for County Counsel to return before rendering a decision.

In response to a question from Mr. Martorello regarding the expansion of the UGB and whether any additional land besides the actual airport was being included, Mr. Mecham said Interstate 5 was also being brought in to make the UGB contiguous on the north side. He said this had been done with the compliance of the Oregon Department of Transportation.

Ms. Esty expressed her preference for leaving the record open.

Ms. Esty, seconded by Ms. Kirkham, moved to keep the record open until the August 19 meeting. The motion failed 3:2 with Ms. Esty and Ms. Kirkham voting in favor.

Mr. Herbert closed the public hearing.

Mr. Martorello said it was logical to have an improved area such as the airport within an urban growth boundary, but said it was incumbent on the applicant to consider future growth of the airport facility. He said he was not confident that all of the impacts of potential growth had been considered.

Mr. Herbert raised concern that airport expansion was not the issue. He said the issue was whether water should be provided at the airport. He said it was beyond the scope of the commission to judge applicant intent after the extension of water service.

Ms. Betz said the City had demonstrated a need for water service. She said she would support the application.

Ms. Betz, seconded by Mr. Herbert, moved to approve the application to co-adopt the amendment to the Creswell Comprehensive Plan map to expand the Urban Growth Boundary and to include the subject property and redesignate that property from "Airport" to "Public Lands" and from "Airport Operations AO/RCP" to "Airport Operations AO/UGB." The motion failed 3:2 with Mr. Herbert and Ms. Betz voting in favor.

III. PUBLIC HEARING: PA 01-5875, Request for Rural Comprehensive Plan diagram amendment from "Agriculture" to "Non-resource" 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 16.252 and LC 16.400. Map and Tax Lot: 17-01-28 #700 / (Applicant: Jack and Beverly Grant)

Thom Lanfear provided the staff report. He said property was located 4 miles east of the City of Springfield and was currently used as a filbert orchard. He noted that the adjacent properties were zoned as exclusive farm use. He cited letters submitted into the record from the Cascade Coalition for sustainable communities, former planning commissioner Carrienne Davis, and 1000 Friends of Oregon. He said one of the main deficiencies in the application was the soil analysis. He said declaring the land non-resource would depend on classification of soil types. He said deficiencies in the soil analysis had been pointed out by the Department of Land Conservation and Development. He said staff was recommending denial. He recommended leaving the record open for DLCD to respond to new information submitted that evening and for the applicant to rebut that testimony.

Mr. Herbert opened the public hearing.

Harry Taylor, representing the applicant, spoke in favor of the application. He said evidence would show that the requirements had been met for the amendment and zoning map amendment. He submitted written material into the record. He stressed that site specific evidence could replace general published information. He said the filbert orchard located on the site was failing because there was too much rock on the land for the trees to grow fruitfully.

Mr. Taylor called attention to photos of the site that supported the application to change to non-resource land. He noted that as much rock as nuts were harvested from the land. He stressed that even if the land were irrigated nothing would grow with the amount of rock that was on the site.

Regarding the issue of adjacent non-resource lands and compatibility standards, Mr. Taylor noted that the land was adjacent to Walterville and was 30 acres. He said the change would not change the agricultural lands nearby because the nature of those agricultural lands was very limited.

Mr. Taylor said if the commission approved the zone change, the most dense residential development, (five acre plots), would be desired.

Gary Kitzrow, 244 Appleblossom Lane, Roseburg Oregon, spoke as a certified soil classifier. He spent considerable time establishing his qualifications before beginning testimony. He said back hoe exposures on the site had showed the amount of rock on the property. He stressed that he had dug up the property thoroughly and the soils would not support the current agricultural use of the property. He said the soils were of much lesser capability than surrounding areas. He said rubble surface superceded soil class and made the area non-resource. He said even the better grades of soil on the property held too much rock with too little water retaining ability to make a farm unit viable.

In response to a question from Mr. Martorello regarding when the classification of the soil was done and what the percentage of farmable land was, Mr. Kitzrow said 37 percent of the site was irrefutably rubble soil. He went on to say that the remaining portion of the soil on the site had too much rock for a farm to succeed.

Mr. Kitzrow stressed that the soil on the specific site was too rocky to be farm land.

Mr. Herbert confirmed that Mr. Kitzrow's testimony was based on actually walking and digging the site and was not based on a soil mapping process that was not site specific.

Mr. Taylor called attention to exhibit I, which showed the reason for the change of rating from 37 percent non-resource soil to 67 percent. He said that DLCD had ignored the previous survey work done by Mr. Kitzrow. He said Mr. Kitzrow had then done a site specific survey, which was mentioned in a letter, submitted that evening that had not been reviewed by DLCD. He said there were too much rock and too little water retaining ability in the soil.

Mr. Lanfear clarified that to meet the threshold of the zone change, over 50 percent of the land had to be declared as non-resource.

Mr. Kitzrow reiterated that, above the 67 percent that was irrefutably rubble soil. The rest of the site also contained too much rock to be regarded as viable agricultural land.

In response to a question from Mr. Martorello regarding what was wanted by DLCD for holding the record open for new information, Mr. Lanfear said DLCD wanted more justification for classifying more than 37 percent of the soil as non-resource. (Class 5 or 6)

Larry Thorpe, spoke as the applicant's attorney. He submitted written material into the record. He referred to the farm unit rule in which Oregon had defined land classifications into resource and non-resource classifications. He said the farm unit rule came into play to ensure that resource lands were not encroached

upon. He said a piece of ground that was non-resource was needed to protect resource land then it was protected as well. He said the problem was that there was no regulation defining a farm unit. He went through the history of case law defining a farm unit. He cited a Coos County case, A Curry County case, and a Douglas County case. He stressed that the property in question was not a farm unit in the sense that the regulation intended.

In response to a question from Mr. Martorello regarding the impact to adjacent parcels, Mr. Thorpe said the rule said that the farm would have to be in common ownership but noted that the court had held that it did not. He noted that the degree of common ownership was a factor that needed to be considered.

In response to a question from Mr. Martorello regarding whether residential development of the land would impact the nearby agricultural land, Mr. Thorpe said there was a management plan and a farm easement required by the County. He noted that there was a huge subdivision across the road from the site.

In response to a question from Mr. Martorello regarding whether he was prevented from making a motion that evening, Mr. Lanfear said State law required keeping the record open for at least 7 days.

Mr. Lanfear recommended leaving the record open until the next meeting in two weeks. He said this would allow DLCD to respond and the applicant to rebut testimony.

Mr. Martorello suggested calling DLCD and requesting a site-specific inspection of the property.

Ms. Esty, seconded by Mr. Martorello, moved to close the public hearing while leaving the record open for written submittals only for the following two weeks. The motion passed unanimously.

Ms. Kirkham went on record to protest the crowding of too many items on to a single meeting agenda.

Mr. Herbert apologized for the applicant for the time they would have to wait to continue the hearing.

The meeting adjourned at 11:15 p.m.

(Recorded by Joe Sams)

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MINUTES

Lane County Planning Commission
Harris Hall - Lane County Courthouse

July 15, 2003
7 p.m.

PRESENT: Mark Herbert, Marion Esty, Vincent Martorello, Juanita Kirkham, Don Clarke, Steve Dignam, Jacque Betz, Robert Collin, members; Tom Lanfear Staff
ABSENT: Chris Clemow

- I. **PA 01-5875/ Deliberation/ Request for an RCP diagram amendment from "Agriculture" to "Non Resource", 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. Map and Tax Lot: 17-01-28 #700/ (Applicant: Jack and Beverly Grant)**

Mr. Herbert convened the meeting.

In response to a question from Mr. Martorello regarding a resume from Booth Consulting Inc., Mr. Lanfear said it was to establish qualifications.

Mr. Collin said he had read the entire written record but had not reviewed the tapes of the public hearing. He expressed his desire to participate in any votes that took place on the matter. He said he would be willing to review the tapes.

Mr. Clarke and Mr. Dignam said they had listened to the tapes of the public hearing and had reviewed the written material and were ready to participate in deliberation.

Mr. Herbert said he would not be comfortable delaying the meeting. He said if the rest of the commission were willing to deliberate, then it should be done that evening.

Mr. Clarke noted that there was some concern with due process on the part of the applicant. He said, rather than causing any possible reason for an appeal, just the commissioners who had listened to the tape should participate in any voting that took place.

Mr. Collin stressed he had read all of the written material submitted into the record and reiterated his desire to participate in any vote that took place.

Mr. Mortorello expressed his concern that a vote, in which Mr. Collin participated, for the particular case, would be subject to appeal. He said it should be made clear that commissioners would need to listen to the tapes of the public hearing to be able to participate.

Mr. Dignam expressed his agreement with Mr. Martorello and recommended that Mr. Collin to recuse himself from any votes.

Mr. Herbert said there was a quorum of members who had listened to the tapes and expressed his desire to continue on that basis. He said Mr. Collin's comments had been dully noted and the rules of participation could be reviewed at a later date.

Mr. Clarke, seconded by Mr. Dignam, moved that Mr. Collin be excused from the vote because of not listening to the tapes of the previous public hearing. The motion passed 5:1 with Mr. Collin voting in opposition.

Ms. Kirkham arrived at 7:10 p.m.

Ms. Esty arrived at 7:12 p.m.

Mr. Clarke said he was still confused as to the soil classification issue. In response to a question from Mr. Clarke regarding the soil classification issue on the case, Harry Taylor said the applicant's position was that the soil was a variant Sifton soil with a high amount of cobble and rubble stone.

Mr. Clarke said LCDC noted that LCDC had a differing opinion and had called for an analysis using NRCS soil classification criteria to show that the soils were mis-classified. He said until that happened the soils would need to be considered as being classified correctly. He said LCDC had not recognized Mr. Kitzrow's testimony at the public hearing that the soils were a variant Sifton soil that did not support agricultural use.

Mr. Thorpe noted that LCDC had received Mr. Kitzrow's written material and had not responded to it.

Mr. Dignam opined that LCDC had made a mistake on their classification. He said the applicant had provided much more detailed data that could legally be relied upon for the commission to make a decision.

In response to a question from Mr. Martorello regarding the LCDC position, Mr. Thorpe said Mr. Kitzrow had submitted his data to LCDC the previous week. He added that the applicant had invited comment and had received no response.

Mr. Herbert stated the role of the commission as deciding whether the extensive data submitted by the applicant was more compelling and consistent with the code than the general soil classification on record with LCDC.

Mr. Clarke said he had explored the role of LCDC in the situation. He said it was his understanding that Goal 3 allowed the submittal of additional information but only under the context of the existing soil classifications that were developed by NRCS. He said the soil needed to be reclassified to show that it could not be used for agricultural purposes.

Mr. Herbert said there was a broader discussion in the hearing. He said the LCDC classification was done with an accuracy of ∇ five acres. He said the LCDC survey was done at a 30,000 foot level while Mr. Kitzrow had done a site-specific inspection with 17 holes dug on the site. He said the applicant had demonstrated, at large expense, their case that the land was too high in rock content to be agricultural land.

He noted that Mr. Kitzrow had occupied a high level position at NRCS before becoming a private consultant and was very familiar with those established standards.

Mr. Dignam said NRCS was not mentioned anywhere in Goal 3 and stressed that more detailed data could be used if it was available and noted that this detailed information *was* available.

Ms. Esty said LCDC had ignored the data submitted and categorized their decision based on the general aim of Goal 3. She said the peculiarities of the specific piece of land should be taken into consideration.

Mr. Herbert reiterated that Mr. Kitzrow had been a high-ranking member of NRCS before he had become a paid soil consultant.

Mr. Martorello said the compelling evidence, in his mind, showed that the site was not agricultural land. He stressed the amount of rock on the site. He said the off site determination was wrong and the site specific inspection had provided much more detail about the actual land on the site. He said the site should not be considered agricultural land. He expressed a desire to have a discussion of the farm unit rule.

Mr. Dignam said the farm unit question faded away because of the ability of the applicant to farm his adjacent land. He said the 30 acres in question did not stop the applicant from farming his land that did support agricultural uses.

Mr. Herbert said his perception of the situation was that a technical codification was inconsistent with significant testimony and on site review. He said he would be more inclined toward the view of LCDC if the agency had made an effort to do an on site inspection of the property. He said LCDC had relied on a desk review of rules and opined that this was inconsistent with common sense.

Mr. Clarke said the Farm Unit Rule said lands in a farm unit would be classified as agricultural lands even if they could not grow crops or support grazing. He noted that until 1998, the 30 acres in question had been included as a part of the applicant's entire farm.

Mr. Herbert disagreed and said the applicant had made an honest attempt to use the land for agricultural purposes. He said the applicant had demonstrated that crops would grow on that particular part of his land.

Mr. Clarke reiterated that the Farm Unit Rule required that the parcel be counted as agricultural land.

Mr. Herbert stressed that the applicant had met the burden of proof entirely. He said he was satisfied with the materials that had been submitted by the applicant.

Mr. Clarke reiterated his position on the farm unit issue.

Ms. Kirkham said there were many more uses for agricultural land than raising crops or grazing animals. She cited building barns, canaries, and production work as examples. She raised concerns that agricultural zoned land was being eroded away in the County.

Mr. Martorello reiterated the comments of Mr. Clarke. He said he was still struggling with the Farm Unit Rule.

Ms. Esty said she would have been much happier if LCDC had done some detailed work on the specific site. She said that work had not been done. She opined that the land in question was not farmable. She said the use of the land could not be dictated to the owner by the Planning Commission.

Mr. Martorello said land that could not produce crops could still be useful.

Mr. Clarke reiterated his position on the farm unit issue. He stressed that the land, even though nothing could be grown on it, was still part of the farm.

Mr. Herbert reiterated Mr. Thorpe's arguments in case law to be compelling. He raised concern over the commission allowing passions over personal concerns and ascribing motivations for land use and the zoning change. He stressed the importance of staying with the issue that was before the commission.

Ms. Betz said there was precedent for what the applicant was asking for. She said there were cases where what the applicant wanted had been granted. She stressed that the applicant had tried everything to make the land viable agriculturally.

Mr. Dignam said the farm unit rule was not as definitive as was being made out. He said Goal 3 made it clear that a farm unit was not a farm unit if a portion of it was not necessary for the operation of nearby agricultural land. He said there was room for interpretation on the issue and stressed that it was the role of the commission to interpret things correctly. He opined that the land was not part of a farm unit.

Mr. Herbert said the question was whether the soil classification issue was compelling and whether the Farm Unit Rule was being interpreted correctly. He said a good faith effort had been made to utilize the land as agricultural. He stressed that the applicant was a professional farmer and had worked for 25 years to make the land viable in an agricultural way.

Mr. Martorello said the question was whether the land in question was still able to be a component of the farm unit. He said he was not convinced that it could not be.

In response to a question from Mr. Martorello regarding whether there had been a change in the staff recommendation, Mr. Lanfear said staff's position was the same. He said the applicant had made a good case that the land had not been used as part of the farm but noted the land could be used for other farm uses besides growing crops.

In response to a question from Mr. Clarke regarding whether there would have to be one or two votes, Mr. Lanfear said the applicant was requesting a zone change to RR-5. He said if the commission felt that RR-10 would be more appropriate then it could take that action after not approving the RR-5 proposal.

Ms. Esty clarified that there would be a subsequent process for subdividing the land if the applicant chose to pursue that path.

Mr. Clarke said and Rural Comprehensive Plan diagram amendment and a zone map amendment were being asked for and noted that the commission could not deal with those in combination.

Mr. Herbert said the key issue was whether the land was agricultural or non-resource.

Mr. Dignam said the filbert tree was a very hardy tree and added that if filbert trees were dying on the property, then he doubted that anything else would grow in a productive way.

Mr. Dignam, seconded by Ms. Betz, moved approval of the applicants request for a Rural Comprehensive Plan diagram amendment from Agricultural to non-resource and a zoning map amendment from Exclusive Farm, Use (E-30), to Rural Residential, (RR-5), for the 30.19 acre site located south of McKenzie Highway 126 and the community of Walterville, pursuant to Lane Code 16.252 and Lane Code 16.400. The motion passed, 4:3, with Mr. Martorello, Ms. Kirkham, and Mr. Clarke voting in opposition.

The meeting adjourned at 8:25 p.m.

(Recorded by Joe Sams)

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