



*Pioneering pathways
to prosperity.*

WASCO COUNTY PLANNING COMMISSION

December 7, 2021

3:00 p.m.

Presented via Zoom

by phone: 1 (253) 215 8782

Meeting ID: 812 3953 0808

YouTube Video of Live Stream:

<https://www.youtube.com/watch?v=sA9oF1R42oA>

(Minutes timestamp from beginning of audio recording)

https://www.co.wasco.or.us/agenda_details_T15_R674.php

CALL TO ORDER

ROLL CALL:

Members Present: Chair Lynne MacIntyre; Vice Chair Kate Willis; Vicki Ashley; Russell Hargrave; Chris Schanno; Mike Davis

Absent Members: Marcus Swift

Staff Present: Planning Director Kelly Howsley-Glover; Senior Planner Daniel Dougherty; Planning Coordinator Jensi Smith; Office Assistant Crysta Harris

Chair MacIntyre called the meeting to order at 3:01. She asked for roll call.

PUBLIC COMMENT ON NON-AGENDA ITEMS:

2:21 Chair MacIntyre asked for comments on non-agenda items. There were none.

APPROVAL OF PAST MINUTES

3:15 Chair MacIntyre called for any additions or corrections for the Minutes from October 5, 2021. There were none. **Commissioner Ashley** motioned to approve the Planning Commission Minutes from October 5, 2021 as presented. **Commissioner Davis** seconded.

The motion was approved 6 to 0: (1 absent – Commissioner Swift)

A listing of the vote, as required by Oregon Revised Statute 192.650.c. is as follows:

Chair MacIntyre- yes

Vice Chair Willis - yes

Commissioner Schanno – yes

Commissioner Hargrave – yes

Commissioner Ashley – yes

Commissioner Davis – yes

Commissioner Swift – absent

The Planning Commission Minutes from October 5, 2021 were approved.

PLANNING COMMISSION HEARING ON LAND USE BOARD OF APPEALS REMAND OF #921-18-00086-PLNG:

4:19 Chair MacIntyre opened the hearing at 3:06 pm. **Chair MacIntyre** reviewed the Hearing details of the remand being presented to the Commission.

7:04 Chair MacIntyre reviewed the procedures and rules of evidence.

- There were no disclosures of Interest or Ex Parte contact from Commissioners.
- There were no challenges to the right of any Commission member to hear the matter.
- There were no questions regarding the Commissions jurisdiction to hear the matter.
- There were no Commissioners who conducted a site visit to the subject property.

12:08 Chair MacIntyre called for the staff presentation.

12:15 Senior Planner Dougherty presented PowerPoint slides. (Attachment A)

48:10 Chair MacIntyre asked for Commission questions for staff.

- **Commissioners Hargrave and Schanno** asked staff questions regarding the soil maps and the surveys – from the past and the one most recently done.
- **Commissioner Schanno** asked staff to review their recommendation.
- **Commissioner Willis** asked for clarification on the Irrevocably Committed component of the staff analysis.
- **Commissioners Schanno and Willis** asked about criteria used to determine Physically Developed in the staff analysis.
- **Commissioner Hargrave** asked about the relationship between Physically Developed and soil classification. Staff clarified the slide had a typo and the recommendation is to deny on the Physically Developed and approved on the Irrevocably Committed portion of the request. Staff reviewed the slide and explained the recommendation again.
- **Commission Hargrave** inquired about the soils on the subject property compared to other properties with the same zoning. Staff noted how the original soil 3 survey compared to the recent soil 1 survey commissioned by the property owner. **Commissioner Schanno** asked for clarification between soil 1 & soil 3 surveys. Staff shared the data contained in the soil 1 survey that discusses how the survey was conducted.
- **Commissioner Ashley** commented on soil 7 & 8 capacity, noting other parts of the county have these levels and its ability to be used for agriculture. She questioned why this wasn't mentioned in the analysis. Staff shared that the information provided by the soil scientist for this property was used for the analysis.
- **Commissioner Schanno** asked for clarification on the criteria for impractical for use for class 7 or higher soils. Staff explained their use of the green sheets and the soil mapping used for the analysis. **Commissioner Davis** commented the soil 7 & 8 is generally poor, non-agriculture.
- **Commissioner Hargrave** asked staff if there were any precedents from Planning for basing zoning on soil classifications. Staff replied they were not aware of any. **Senior Planner Dougherty** stated the diminished soil capacity is only one factor. **Commissioner Davis**

commented that the soil classification is required when you do a Part of Parcel. There were no other Commissioner questions.

1:14:22 Chair MacIntyre called for testimony from the Applicant or their representative.

1:14:34 Applicant's representative **Mr. Summerfield** spoke regarding the proposal. He spoke about the soil scientist and the process he used to classify the 7 & 8 soils. That is the criteria that shows it should not remain in resource use. This is relevant to the Irrevocably Committed standard. He urges the Commission to use this to approve.

1:17:58 Chair MacIntyre called for further questions.

1:18:04 Commissioner Willis stated the physically developed portion did not seem to have been met. She stated the soil analysis for what was suitable and what isn't doesn't seem obvious. **Mr. Summerfield** responded, asking staff to share the slide regarding the eight factors for 0028. He stated too much focus on the numbers for the Irrevocably Committed criteria. It is more than just soils. The Physically Developed or not is a binary choice. The diminished soil capacity is close but how do you make use of the lands that have suitable soils, find them and devote them to resource use? He spoke of the developed portion of the property and the parcel size for use as forest. He spoke of the adjoining uses being residential. He stated the zoning for this parcel is out of step with its neighbors. He stated the soils isn't the only factor, it's all of these things.

1:21:27 Commissioner Willis spoke regarding the original request, the zoning maps and asked about the crops that had been identified as possible for this property. She feels there are a lot of factors that need to be reviewed. **Commissioner Ashley** stated the you can pasture with supplement feed on 7 & 8 soils. **Commissioner Davis** stated it depends on the physical size. Forty acres will not sustain a family, so need a broader picture. Staff shared the data provided in the green sheets for class 4 & 6 regarding winter wheat, grass hay, ponderosa pine and wildlife suitability.

1:24:52 Commissioner Hargrave noted the conversation may be shifting into deliberations.

1:25:11 Chair MacIntyre stated questions should be directed to applicant or representative. She asked if there were any others. There were none.

1:25:27 Chair MacIntyre asked if any audience members wish to speak in favor of the application. There were none.

1:25:58 Chair MacIntyre asked if any audience members wish to speak in opposition of the request.

1:26:09 Sheila Dooley asked to have Party status. **Ms. Dooley** shared information from the USDA soil survey and made comparisons between the original soil survey and the recent one commissioned by the applicant. She feels request for rezone should be denied. (**Ms. Dooley** submitted comments – Attachment B) (Additional submission – Attachment F)

1:29:22 Phil Swain requested Party status. He stated there was 2014 previous request that was denied after the county received a response from Department of Land Conservation Development (DLCD) and Oregon Department of Forestry (ODF). He reviewed the contents of the DLCD letter. He reviewed items that he feels are not correctly depicted on the request submitted. He requested rejection of proposal. (**Mr. Swain** submitted comments – Attachment C)

1:32:18 Jill Barker requested Party status. She reviewed items from the proposal regarding the capabilities of the soils and ability to produce that she does not agree are correct. She notes that the site

plans are significantly different than the site plan in the original application. This property is not Physically Developed. She is concerned about more development in a high fire risk area during drought as well declining aquifers. **Ms. Barker** spoke of previous crops grown on this property. She feels it can be used for forest land and the soils are capable of growing trees (**Ms. Barker submitted comments – Attachment D**)

1:35:42 Gary Cassidy spoke about the oak growing in the area. He stated that habitat is a key factor in managing wildlife. He noted Wasco Oak is the highest priority in the state for conservation and is important habitat for as many as 300 species. Many agencies recommend against development on these lands to limit the impact to wildlife. **Mr. Cassidy** is concerned that the zone change could set a precedent for further development that would have a negative impact on habitat.

1:38:00 Mike Sargetakis stated he is representing **Sheila Dooley** and **Jill Barker**. He commented on staff presentation noting almost nothing has changed since the Land Use Board of Appeals (LUBA) remand. He referenced information in the LUBA remand regarding both the Irrevocably Committed and Physically Developed, noting previous cases regarding these issues. He requested the record remain open. He commented on specific areas of the staff report noting his disagreement with the stated findings. (**Mr. Sargetakis submitted comments – Attachment E**)

1:41:45 Jennier Roch stated she has lived on Seven Mile her entire life. She stated a friend had lived on subject property and successfully grown many things on this property. She feels it isn't farmed because they have chosen to not farm it. She doesn't believe it is unsustainable.

1:43:15 Chair MacIntyre asked if Commissioners had any questions for those in opposition? There were none.

1:43:33 Chair MacIntyre asked if the Applicant or their representative would like to rebut the opposition testimony.

1:43:50 Mr. Summerfield stated **Mr. Cassidy's** comments are outside the scope of the remand. It is not in a game overlay. He shared a large map noting it was intended to demonstrate the unsuitability of the soils. He stated the original site plan was to scale and noted the trailer sites were former sites, not future trailer sites. These were noted as they were trying to show what is on the property. This request is for a zone change, not a development application. He noted the soil survey was professionally done and specific to this property. He refuted the testimony that stated there was an illegal house on the property. He stated there is no illegal development anywhere on this property. He urged the Commission to not leave the record open and to continue with their deliberations.

1:47:28 Chair MacIntyre asked for any other questions for anyone including staff?

1:48:05 Commissioner Schanno asked **Mr. Sargetakis** to show him where the definition of Irrevocably Committed is located in the LUBA report. **Mr. Sargetakis** shared there was some information in his written testimony and the definition is located in OARs and noted in other cases. He stated the fundamental test for Irrevocably Committed is the relationship between the subject property and the surrounding area. He is happy to submit more information if requested. **Chair MacIntyre** stated that staff had spoken of the Irrevocably Committed throughout the report.

1:50:13 Chair MacIntyre asked if the Commission had any further questions of Appellant, Applicant or staff. There were none.

1:50:30 Chair MacIntyre asked if procedurally, the record had to remain open if requested. **Senior Planner Dougherty** and **Director Howsley-Glover** stated they believed the record should stay open if requested. The ordinance would be checked to confirm procedure and time frame.

1:52:37 David Wilson spoke about the development, explaining following the LUBA remand, they added the additional items in the new site plan. He noted not all of the items on the property were on the site plan and had left them off the original, believing they were not necessary. Following the remand, he had mapped all the lines on the property. He explained the square footage of the home on the original site plan did not include the decks, which had been included with the new site plan. He stated the homes had been there 30 years ago and had been removed because they had not been permitted. The utilities that were noted on the site plan are still there. The grass is mowed for fire hazards. He said there have been attempts to farm it in the past, noting he doesn't believe that anyone can make a living from farming that property.

1:58:22 Director Howsley-Glover reviewed the Ordinance. She shared that it is at the Planning Commissions discretion to leave the record open or close for deliberation.

1:59:00 Chair MacIntyre asked for a consensus on whether to leave the record open or close the hearing and move to deliberation.

- Commissioner Hargrave – no continuance of the hearing
- Commissioner Schanno - not to continue
- Commissioner Willis – Commission should deliberate
- Commissioner Davis – should deliberate
- Commissioner Ashely – should deliberate

2:00:10 Chair MacIntyre closed the public hearing and the Planning Commission entered into deliberation at 5:01 pm. **Chair MacIntyre** stated only Planning Commissioners can ask questions of staff in this part of the hearing.

2:00:39 Commissioner Willis asked about the owner's comment about not making a profit. She would like confirmation from **Senior Planner Dougherty** as to where that would fall into any of the requirements, confirmation if that should be part of the consideration. **Planner Dougherty** responded, noting the Irrevocably Committed, the relationship between parcels and demonstrates that farm use or forest operation are impractical. **Commissioner Schanno** asked if impractical means to make a living on the property. **Planner Dougherty** stated that was one of the factors. **Commissioner Schanno** asked it that would take away the Irrevocably Committed. **Planner Dougherty** stated it would be a factor.

2:03:15 Commissioner Willis commented it is all things considered, balancing different factors. **Commissioner Davis** said he agrees.

2:03:47 Chair MacIntyre reviewed the Staff recommendation regarding Irrevocably Committed.

2:04:16 Chair MacIntyre called for further discussion.

2:04:25 Commissioner Schanno stated if it's going to be hard to make money on this property, that makes it Irrevocably Committed. He feels the information presented by the soil scientist has more weight than the map presented from 1982. He thinks the acreage, development and soils would make it hard to use as forest land.

2:05:47 Commissioner Hargrave agrees with **Commissioner Schanno's** comments. He discussed the GIS map and the other F-2 properties, many smaller than this property. If the size is a factor, there are a lot that would meet the criterion. The soil classification from an expert is better than the broader map from the state in the 80s. He wants to better to understand the ramification of all of the F-2 land. This property is not the worst soil on those lands. Poor soil as a criterion would have many others that would meet that requirement. He is weary of the precedent that it might lead to. If that is valid criteria for rezoning, many may use that reason as well.

2:08:46 Planner Dougherty shared the definition of forest lands is located in OAR.660.006.005 subsection 7.

2:09:30 Commissioner Willis stated there are many factors to consider. She found the testimony of those with historical knowledge, previous decisions, percentages provided are compelling. These factors are weighing her towards denying the request, noting this needs to be reviewed carefully.

2:12:01 Commissioner Davis stated the consideration to deny are the factors shared by **Commissioner Hargrave**. Need to consider if we are opening Pandora's box, having 10 acres all scattered about using this as a precedence. There are many factors but looking at the bigger picture, the soils, all sorts of things. He is giving pause to what precedence this could create. **Chair MacIntyre** stated generally, each case stands on its own. There are numerous factors that go into Irrevocably Committed and Physically Developed. Staff believed there were multiple factors regarding irrevocably committed, not just the soils.

2:14:27 Commissioner Ashely agrees with **Commissioners Hargrave** and **Davis**. We will be opening the flood gates for rezones of those properties. We have to look at what this could set as a precedence, look at it as a whole.

2:15:01 Commissioner Willis agrees. Her recollection from the original hearing was there wasn't enough information and they did try to have language in the approval that it was for this instance only. It was only advisory. She believes it will be a problem going forward. **Chair MacIntyre** stated every application is decided on its own merits. **Commissioner Willis** stated the set of facts are different on every case, in terms of denying or approving but each would have to go through this same balancing act. There are two requirements and a set of facts that were presented. In the future there would be no way revisit how we deliberated. **Commissioner Schanno** stated this case is this case, not to worry about the next one. **Commissioner Willis** is concerned about the flood gate. **Commissioner Davis** said that if it is approved, Commissioners will look at this. The reasoning behind it is a long list of items, which they would go through no matter what. Whether we pass or not pass, we would take a look at the old zoning. Everything is its own case. Does it open the flood gate? He doesn't think we should consider that.

2:19:49 Commissioner Schanno spoke about what the staff recommendations were, what to approve and what to deny. **Planner Dougherty** clarified there only need be one criteria not met to recommend denial.

Commissioner Schanno stated he agreed with the soils information but isn't sure the criteria for Irrevocably Committed has been met. If staff said it wasn't met, he would lean towards their recommendation. **Chair MacIntyre** stated staff recommended approval on Irrevocably Committed.

Planner Dougherty clarified that if one of the criteria wasn't met, the Commission can choose to

recommend denial. His recommendation was to deny on the Physically Developed but approve on the Irrevocably Committed. **Commissioner Davis** stated a lot of work had gone into this and he thought they should take staff recommendation.

2:23:05 Chair MacIntyre asked for any further comments or discussion.

2:23:13 Commissioner Ashley said she would like them to vote on each criteria separately. **Chair MacIntyre** stated it would be to approve or deny the application as a whole. The discussion continued and **Chair MacIntyre** asked staff for guidance. Staff stated it could be approved on one and denied on another.

2:24:46 Chair MacIntyre asked for motion on OAR 660-004-0025. **Commissioner Ashley** motioned to deny on OAR 660-004-0025. **Commissioner Willis** seconded. No further discussion

The motion was approved 6 to 0 (1 absent – Commissioner Swift)

A listing of the vote, as required by Oregon Revised Statute 192.650.c. is as follows:

Chair MacIntyre- yes

Vice Chair Willis - yes

Commissioner Schanno – yes

Commissioner Hargrave – yes

Commissioner Ashley – yes

Commissioner Davis – yes

Commissioner Swift – absent

2:25:33 Chair MacIntyre asked for motion on OAR 660-004-0028. **Commissioner Ashley** motioned to deny on OAR 660-004-0028. **Commissioner Willis** seconded. No further discussion.

The motion was not approved with a split decision of 3 to 3 (1 absent – Commissioner Swift)

A listing of the vote, as required by Oregon Revised Statute 192.650.c. is as follows:

Chair MacIntyre- no

Vice Chair Willis - yes

Commissioner Schanno – no

Commissioner Hargrave – yes

Commissioner Ashley – yes

Commissioner Davis – no

Commissioner Swift – absent

2:29:27 Director Howsley-Glover advised about options for recommendation to the Board of County Commissioners. It could be sent as a tie, continue to deliberate or issue continuance.

2:29:55 Commissioner Hargrave said to send it to Commissioners as a tie vote. The consensus was to send it to the Board of County Commissioners as a tie vote.

The Planning Commission will send the recommendation(s) to the Board of County Commissioners: Deny request on OAR 660-004-0025 and a split decision to neither approve or deny on OAR 660-004-0028.

2:30:36 Chair MacIntyre reviewed the procedure for sending proposal to the Board of County Commissioners.

PLANNING COMMISSION BYLAW UPDATES 2021

2:30:54 Discussion on updates to bylaws has been postponed until January. **Commissioner Schanno** moved to table bylaws discussion until January. **Commissioner Hargrave** seconded.

The motion was approved 6 to 0: (1 absent – Commissioner Swift)

A listing of the vote, as required by Oregon Revised Statute 192.650.c. is as follows:

Chair MacIntyre- yes

Vice Chair Willis - yes

Commissioner Schanno – yes

Commissioner Hargrave – yes

Commissioner Ashley – yes

Commissioner Davis – yes

Commissioner Swift – absent

2:32:22 Planning Director Howsley-Glover gave a brief Director’s Report that included recruitment for Code Compliance officer. We have a prospective Associate Planner that will shadow within the department.

2:33:14 Commissioner Schanno motioned to adjourn the meeting. **Commissioner Hargrave** seconded.

Chair MacIntyre called for the vote.

The motion was approved 6 to 0: (1 absent – Commissioner Swift)

A listing of the vote, as required by Oregon Revised Statute 192.650.c. is as follows:

Chair MacIntyre- yes

Vice Chair Willis - yes

Commissioner Schanno – yes

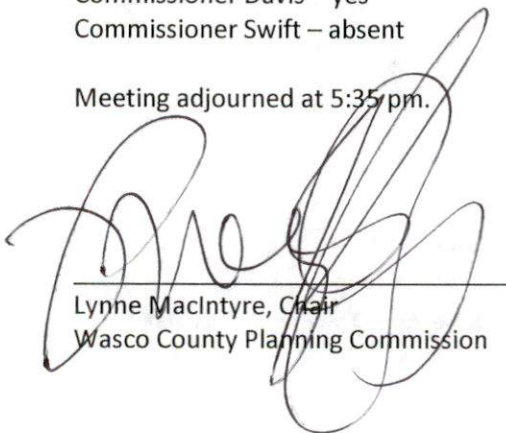
Commissioner Hargrave – yes

Commissioner Ashley – yes

Commissioner Davis – yes

Commissioner Swift – absent

Meeting adjourned at 5:35 pm.



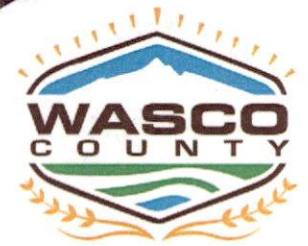
Lynne MacIntyre, Chair
Wasco County Planning Commission



Kelly Howsley-Glover, Director
Wasco County Planning & Development

ATTACHMENT A

Planning Department



Planning Commission
Public Remand Hearing
December 7, 2021

Applicant/Owner: Dave Wilson
(921-18-000086-PLNG)

Agenda

- Overview of the Request and Area Involved
- History & Scope of Remand Hearing
- Chapter 660, Division 4
 - OAR 660-004-0025
 - OAR 660-004-0028
- Planning Commission Options

Overview of the Request & Area

Request

1. Comprehensive Plan Map Amendment: Change a legal parcel designated “Forestry” to “Forest Farm”;
2. Exception to Statewide Planning Goal 4 – Forest Lands; and
3. Zone Change: Change a legal parcel zoned Forest (F-2) Zone to Forest-Farm (F-F 10) Zone (Non-Resource) (remove from resource zone protections)

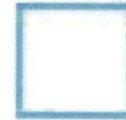
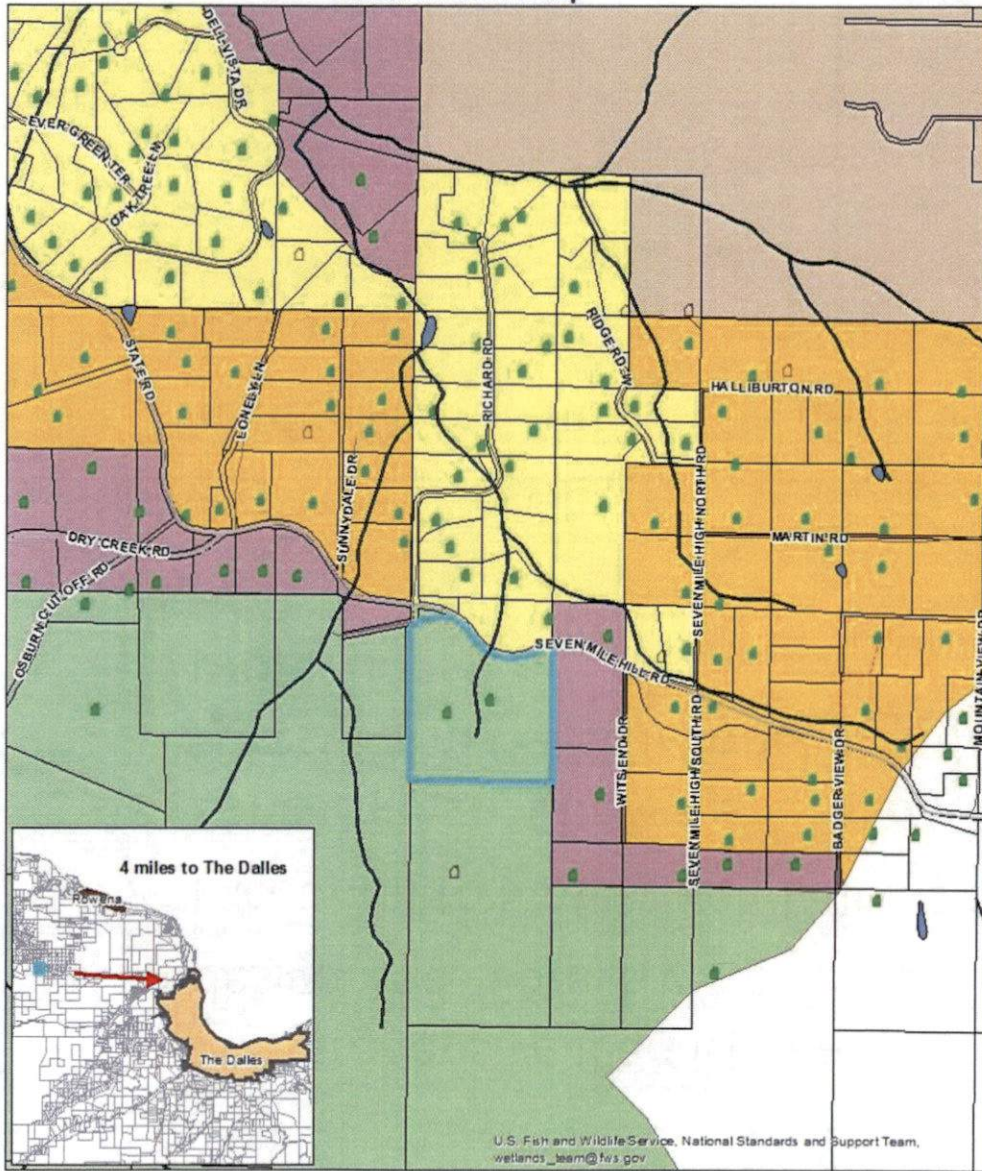
Subject Area Overview

- Vicinity Map & Subject Parcel & Surrounding Zones
- Vegetation

Vicinity Map & Surrounding Zones

ATTACHMENT A

Location & Zone Map

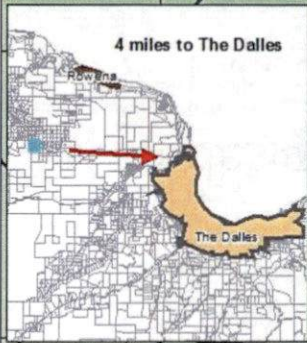


Subject Parcel

Map & Tax Lot: 2N 12E 22 4400

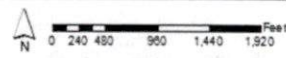
Tax Account No.: 884

GIS Acres: 40.16



U.S. Fish and Wildlife Service, National Standards and Support Team,
wetlands_team@fws.gov

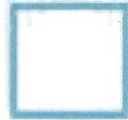
- A-1(160)
- R-R(10)
- F-2(80)
- R-R(5)
- F-F(10)
- Riverine
- Freshwater Pond
- Unknown Addresses
- Addresses
- Wilson Property
- Taxlots



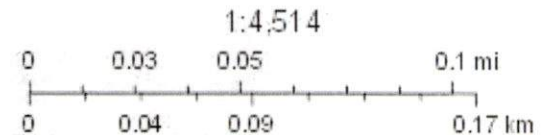
This product is for informational purposes and has not been intended for, or be suitable for, engineering, or surveying purposes. Users of this product should review it against the primary data and information sources to ascertain the validity of the information.

Subject Parcel Vegetation

ATTACHMENT A



Subject Parcel
Map & Tax Lot: 2N 12E 22 4400
Tax Account No.: 884



© OpenStreetMap (and) contributors, CC-BY-SA, Oregon Statewide Imagery Program (OSIP) - Oregon Image Framework Implementation Team, Wasco County GIS, DOGAMI, State of Oregon, Wasco County GIS, Lane County, Assessor, Wasco County GIS

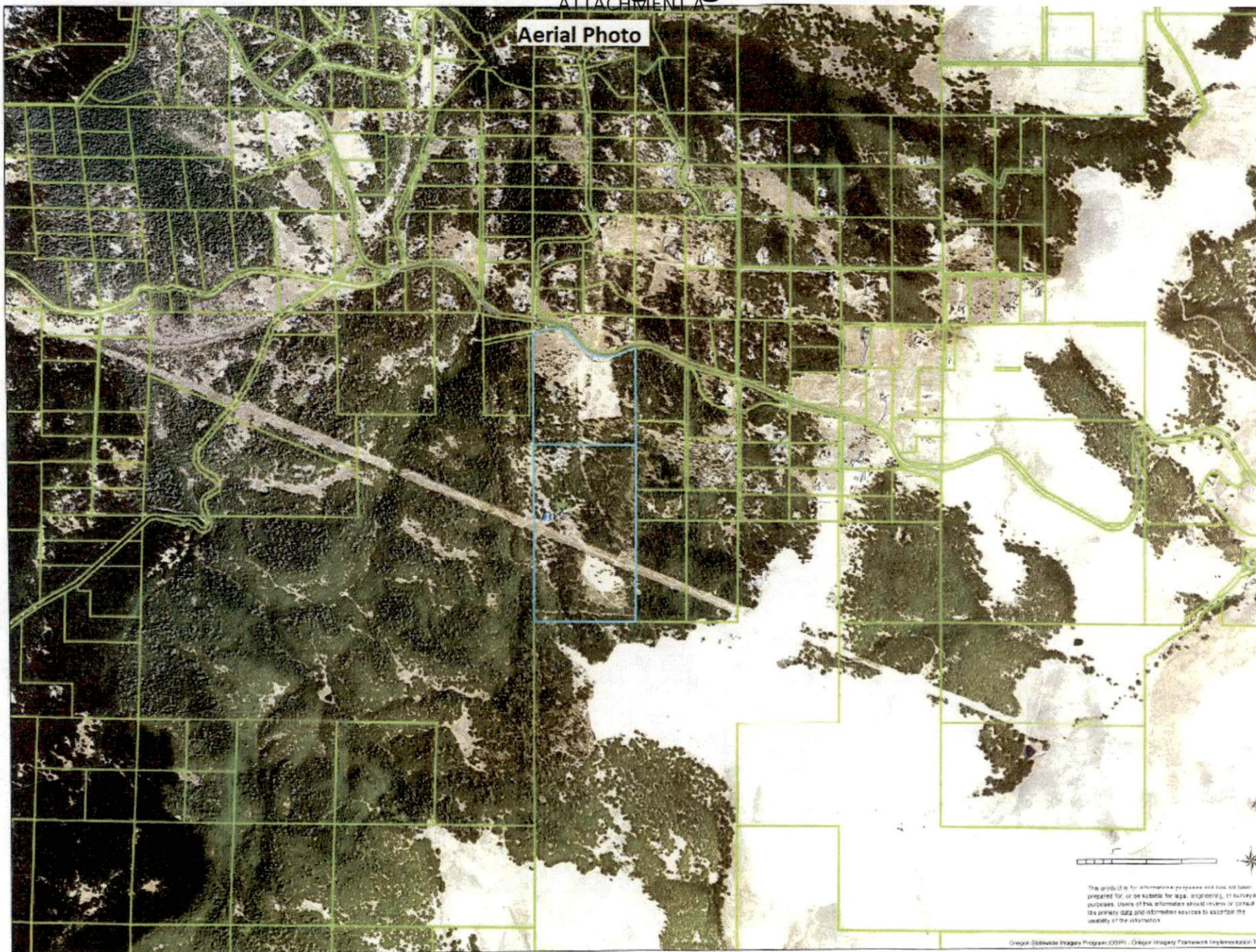
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Surrounding Vegetation

ATTACHMENT A

Aerial Photo



The grid is for information purposes and has not been prepared for or is suitable for legal engineering or surveying purposes. Users of this information should review or consult its primary data and information sources to ascertain the usability of the information.

History & Scope of Remand Hearing

History of Request

- Initial application submitted on May 23, 2018
- WC-Planning Commission Hearing on April 2, 2019 (Recommended Approval)
- WC-Board of Commission Hearing on June 5, 2019 (Approved)
- Appealed to the Land Use Board of Appeals (LUBA)
 - Decision Remanded on January 14, 2020
- Request for Remand Hearing received on June 13, 2021

Scope of Remand Hearing

- Staff findings and recommendations for this hearing are limited to OAR 660-004-0025 and OAR 660-004-0028.

Chapter 660, Division 4

OAR 660-004-0025

Exception Requirements for Land Physically Developed to Other Uses

- (1) *A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660-004-0000(1)*

- (2) *Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception.* (See Attachment C Page 12 for complete rule)
 - Specific area(s) must be shown on a map or described and keyed to findings;
 - Identify the extent and location of the existing physical development;
 - Structures, roads, sewer and water facilities, and utility facilities
 - Allowed uses cannot be used to justify physically developed exception



OAR 660-004-0025 Applicant Site Map

Applicant Estimates

- Power Lines / 15' from center line
- Structures / 50' (fire fuel break)
- Seven Mile Hill Road / 50' buffer
- Driveway Easement / 50' buffer

Total = 571,187 ft²

Total

32.81% of total area

(See Attachment D Exhibit 4)

OAR 660-004-0025

Staff Information & Estimates

- *Chapter 10 Fire Safety Standards*
 - *Section 10.120 - Defensible Space – Clearing and Maintaining a Fire Fuel Break*
 - *50 foot fire fuel break around structures*
 - *Section 10.140 - Access Standards - Providing safe access to and escape from your home*
 - *A fire fuel break extending 10 feet either side of the center line of the driveway is required*
- Public Road Maintenance Area (4-6' on each side of county road)
- Power Line Maintenance Easement Area (15' from centerline)



OCAR 660-004-0025

Staff Estimates

- Actual Development = 14,620 SF
 - Structural Fire Break = 113,500 SF
 - Access Drive Fire Break = 67,740 SF
 - Power Line Easement = 112,800 SF
 - Public Road Maintenance = 6,690 SF
- Total = 315,350 SF

Total

18% Physically Developed

OAR 660-004-0025

Staff Conclusions and Recommendations

- Based on the facts, analysis, and findings, the parcel does not meet the required standards of OAR 660-004-0025
- Staff recommends a denial of the request under the physically developed exception

(See Attachment C Page 25).

Chapter 660, Division 4

ATTACHMENT A

OAR 660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

- (1) *A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:*
- a) *A 'committed exception' is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule;*
 - b) *For the purposes of this rule, an 'exception area' is that area for which a 'committed exception' is taken;*
 - c) *An 'applicable goal,' as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.*

OAR 660-004-0028

OAR 660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

(2) *Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:*

(a) The characteristics of the exception area;

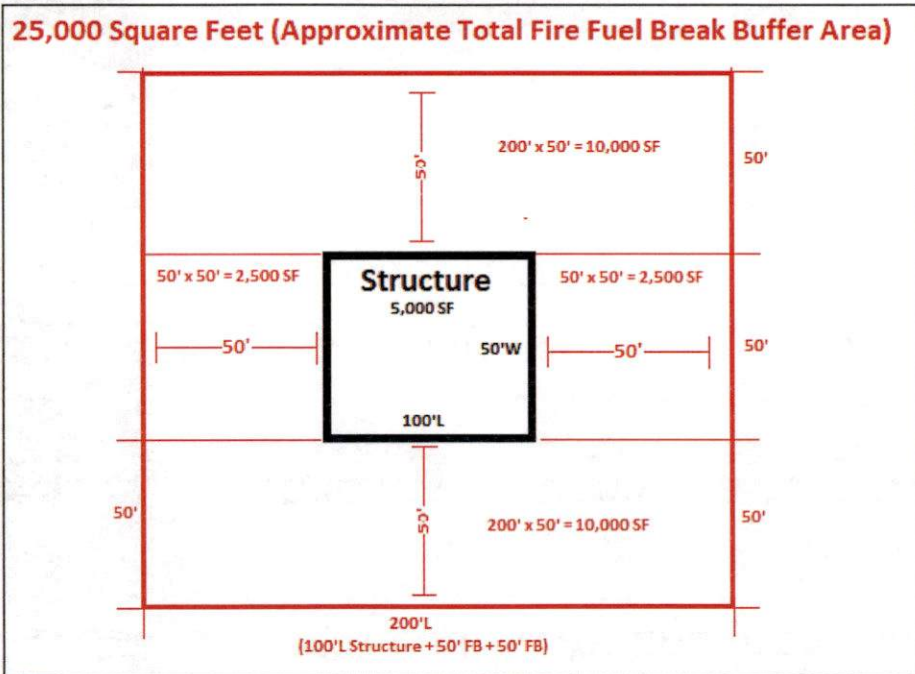
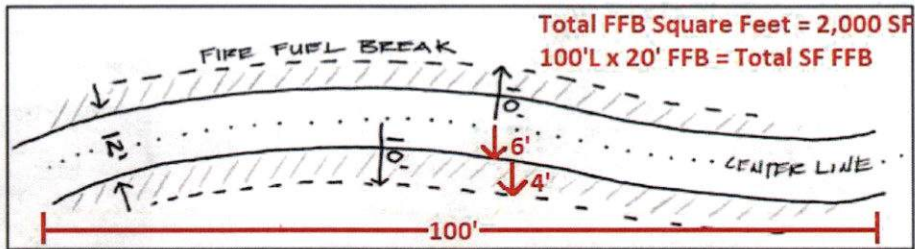
Staff Analysis

- **Physical Development & Fire Buffer & Maintenance Area Estimates**
- **Undeveloped Areas & Soils**

OAR 660-004-0028(2)(a)

ATTACHMENT

Physical Development & Fire Buffer & Maintenance Area Estimates



Total
18% Physically Developed



QAR 660-004-0028(2)(a)

Undeveloped Areas & Soils

- North-South Wetland (non fish bearing)
- Grass hay farmed in pasture area
- Tree growth on east edge, south, and southwest areas

Statewide Wetlands Inventory

Riverine

National Hydrography Dataset

Waterbody - Large Scale (Pond)

Flowline - Large Scale (Stream)

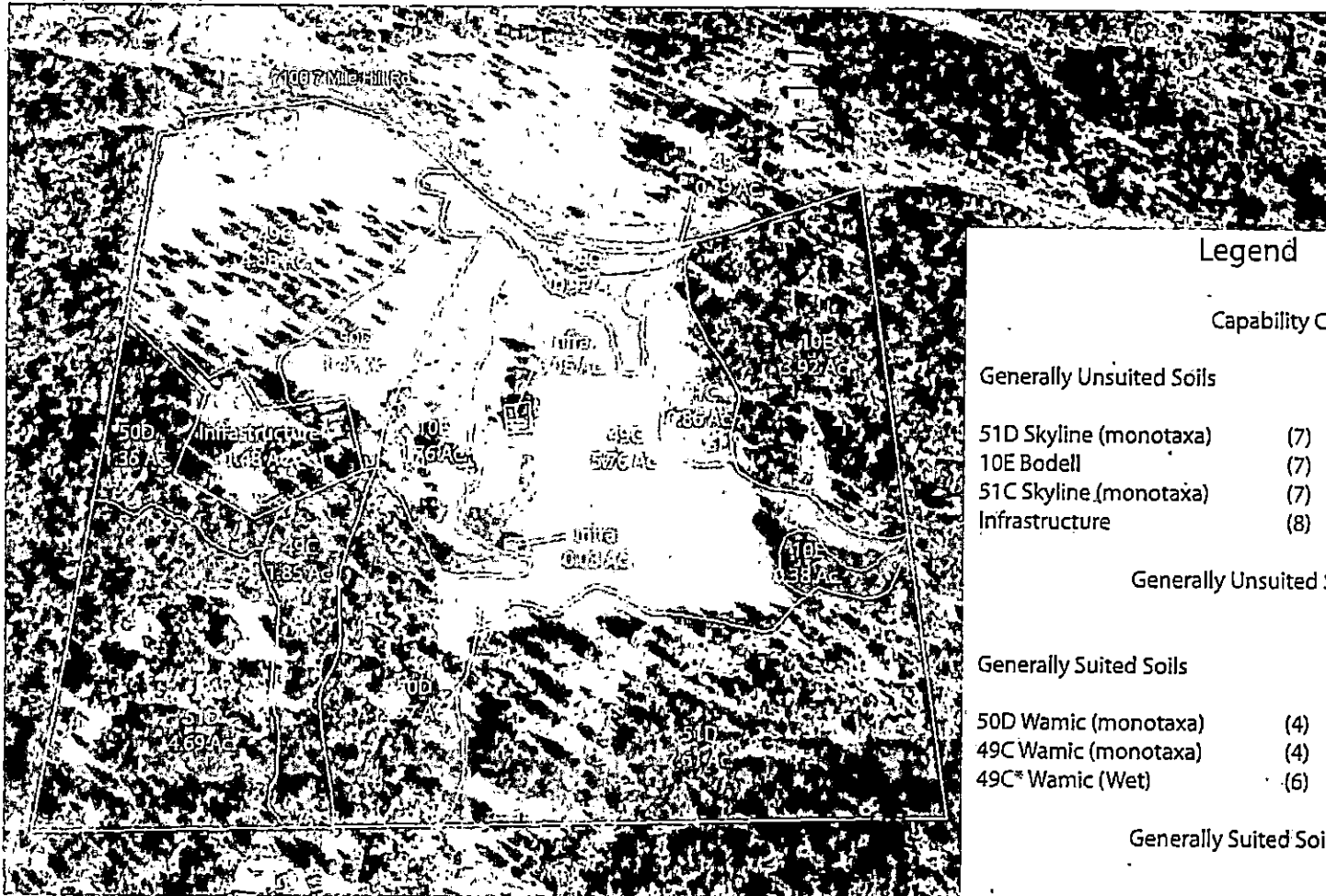
© OpenStreetMap (and contributors), CC-BY-SA, USGS TNM - National Hydrography Dataset, Data Released October, 2021., Oregon Statewide Imagery Program (OSIP) - Oregon Imagery Framework Implementation Team, Wasco County GIS, Lake County Assessors, Wasco County GIS



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Wilson Property
 SATTACHMENT Hill Rd
 The Dalles, Oregon
 T2N R12E Sec. 22 TL#4400

Order 1 Soil Survey



Legend

Capability Class Acreage

Generally Unsited Soils

51D Skyline (monotaxa)	(7)	= 12.30 Acres
10E Bodell	(7)	= 6.06 Acres
51C Skyline (monotaxa)	(7)	= 0.86 Acres
Infrastructure	(8)	= 1.57 Acres

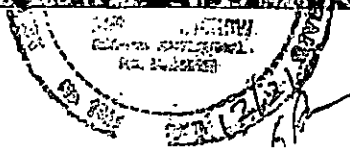
Generally Unsited Soils = 20.79 Acres

Generally Sited Soils

50D Wamic (monotaxa)	(4)	= 5.74 Acres
49C Wamic (monotaxa)	(4)	= 12.68 Acres
49C* Wamic (Wet)	(6)	= 0.92 Acres

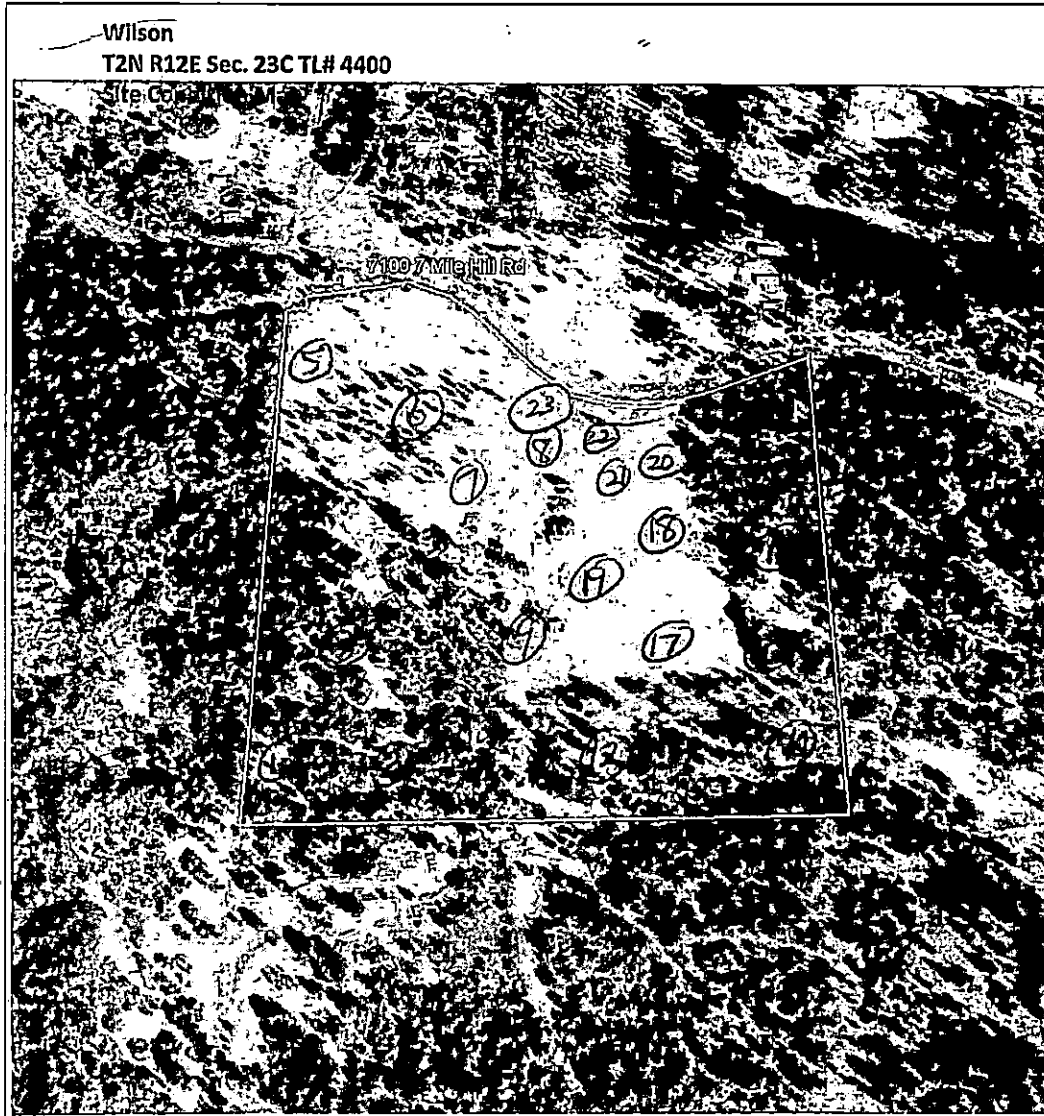
Generally Sited Soils = 19.34 Acres

Total Acres: 40.13 Acres
 Percentage of Generally Unsited Soils: 51.8%



OAR 660-004-0028(2)(a)

ATTACHMENT



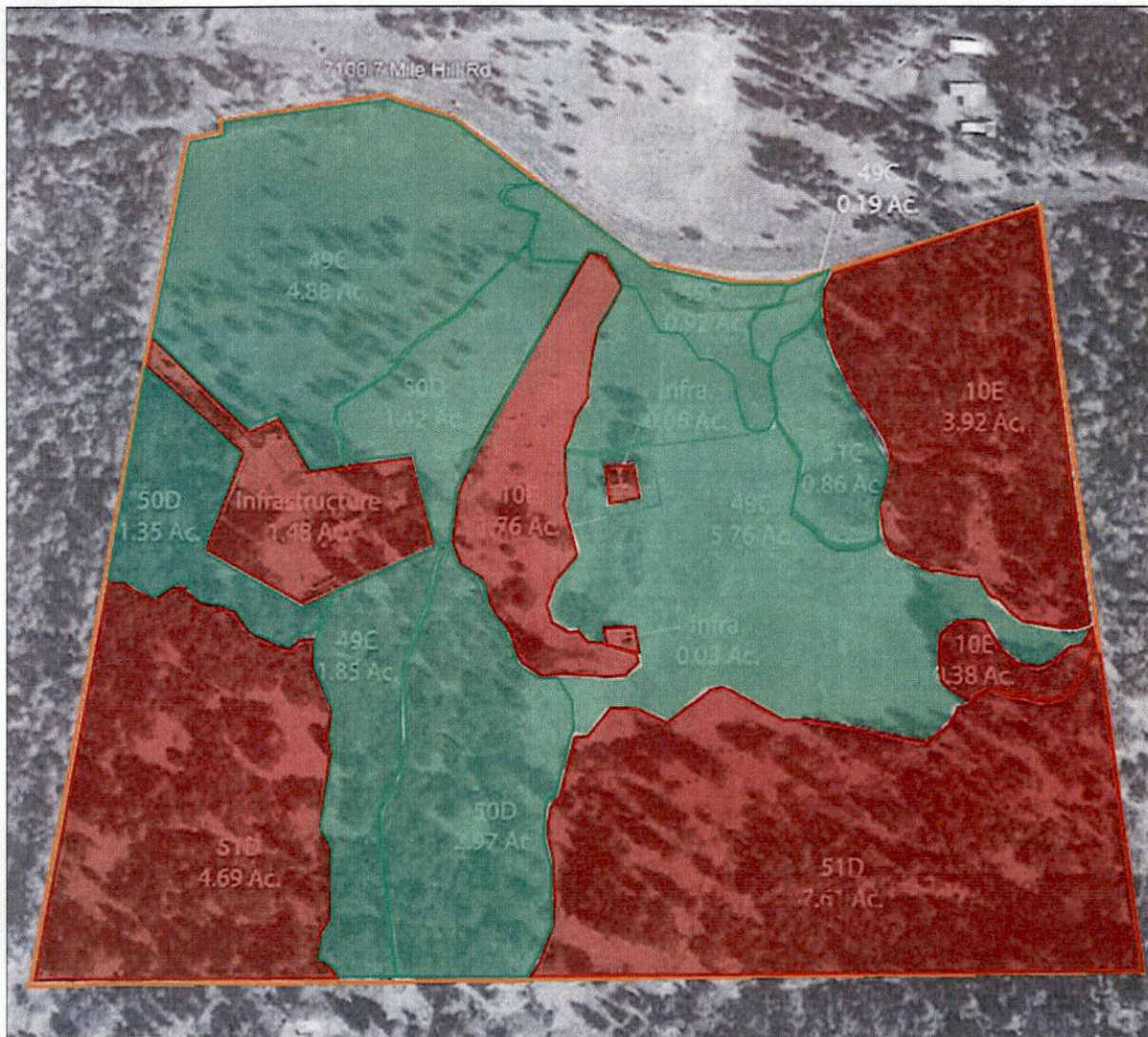
Undeveloped Areas & Soils

“Wilson – Order 1 Soil Survey”




- Found to be complete and consistent according to DLCD Farm Forest Specialist
- Conducted by Soils Scientist Gary Kitzrow, M.S., Certified Professional Soil Classifier (CPSC), Certified Professional Soil Scientist (CPSS) (License # 1741), Principal Soil Taxonomist.
- Survey contains detailed soil testing analysis for 23 study areas on subject parcel

OAR 660-004-0028(2)(a)

ATTACHMENT



Soil Suitability Map

-  Subject Parcel
-  Generally Unsuitable Soils (Class 7 & 8)
 - 51D Skyline = 12.30 Acres
 - 10E Bodell = 6.06 Acres
 - Infrastructure = 1.57 Acres
 - Total = 20.79 Acres (51.8% of parcel)
-  Generally Suitable Soils (Class 4 & 6)
 - 50D Wamic = 15.74 Acres
 - 49C Wamic = 12.68 Acres
 - 49 C Wamic (Wet) = 0.92 Acres
 - Total = 19.34 Acres (48.2% of parcel)



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11-21-2021

Source: "Wilson – Order 1 Soil Survey"

OAR 660-004-0028

OAR 660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

(2) *Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:*

(b) The characteristics of the adjacent lands;

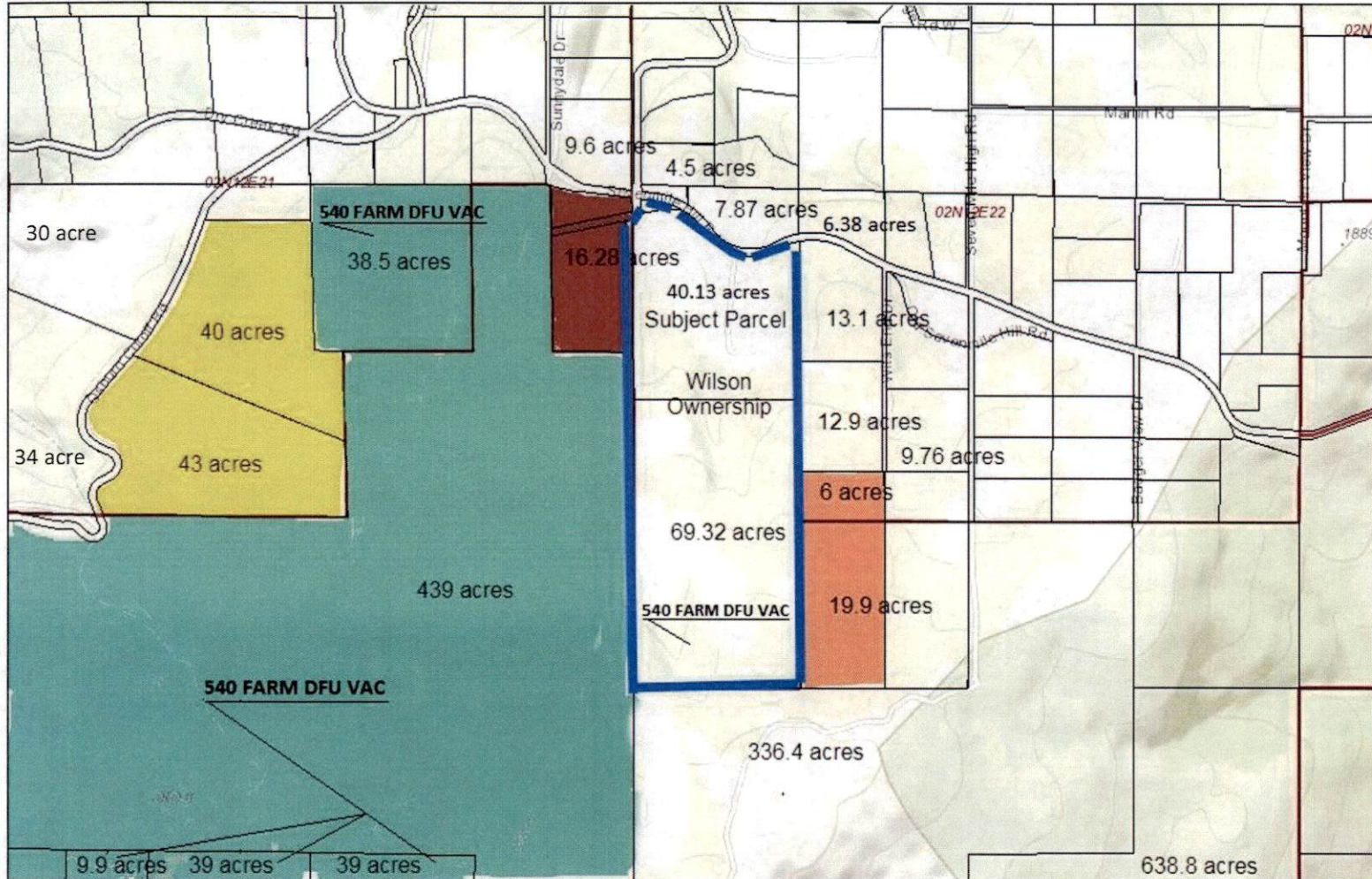
Staff Analysis

- **Soil Analysis**
- **General Land Use History, Zoning, and Use**

0AR 660-004-0028(2)(b)

General Land Use History, Zoning, and Use

ATTACHMENT A



Contiguous Ownership

- KENNETH A THOMAS
- RICHARD & HOPE VANCE
- DENNIS L & MARY R DAVIS
- DAVID & JOLENE WILSON
- STEVEN A BLEILER

Single Parcel (Split-Zone)
F-F(10 & F-2(80))

Map Data
WC-Assessor, WC-GIS

Not colored = No contiguous ownership

540 FARM DFU VAC = In tax deferral

11-24-2021

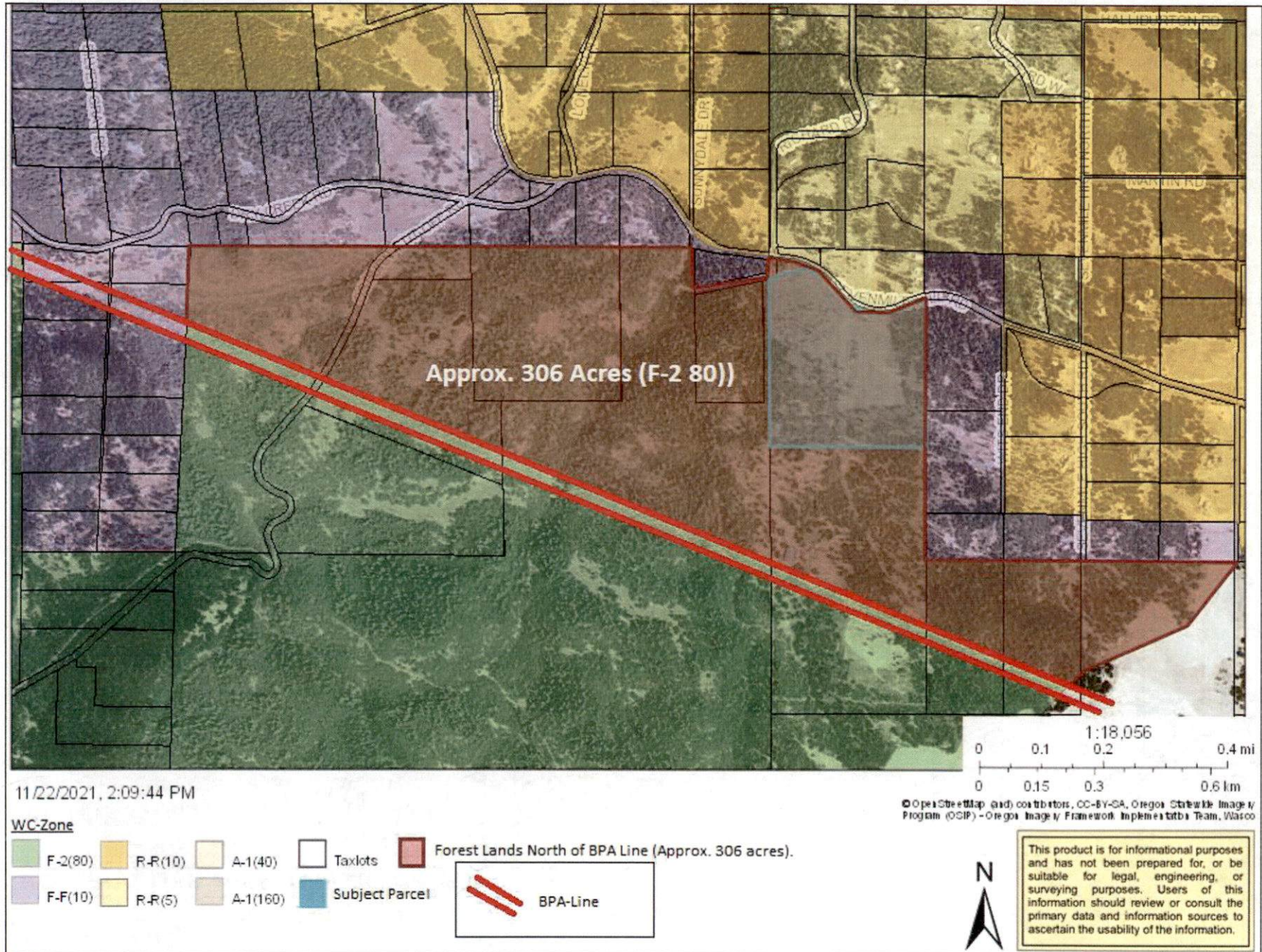


This product is for informational purposes and has not been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

OAR 660-004-0028(2)(b)

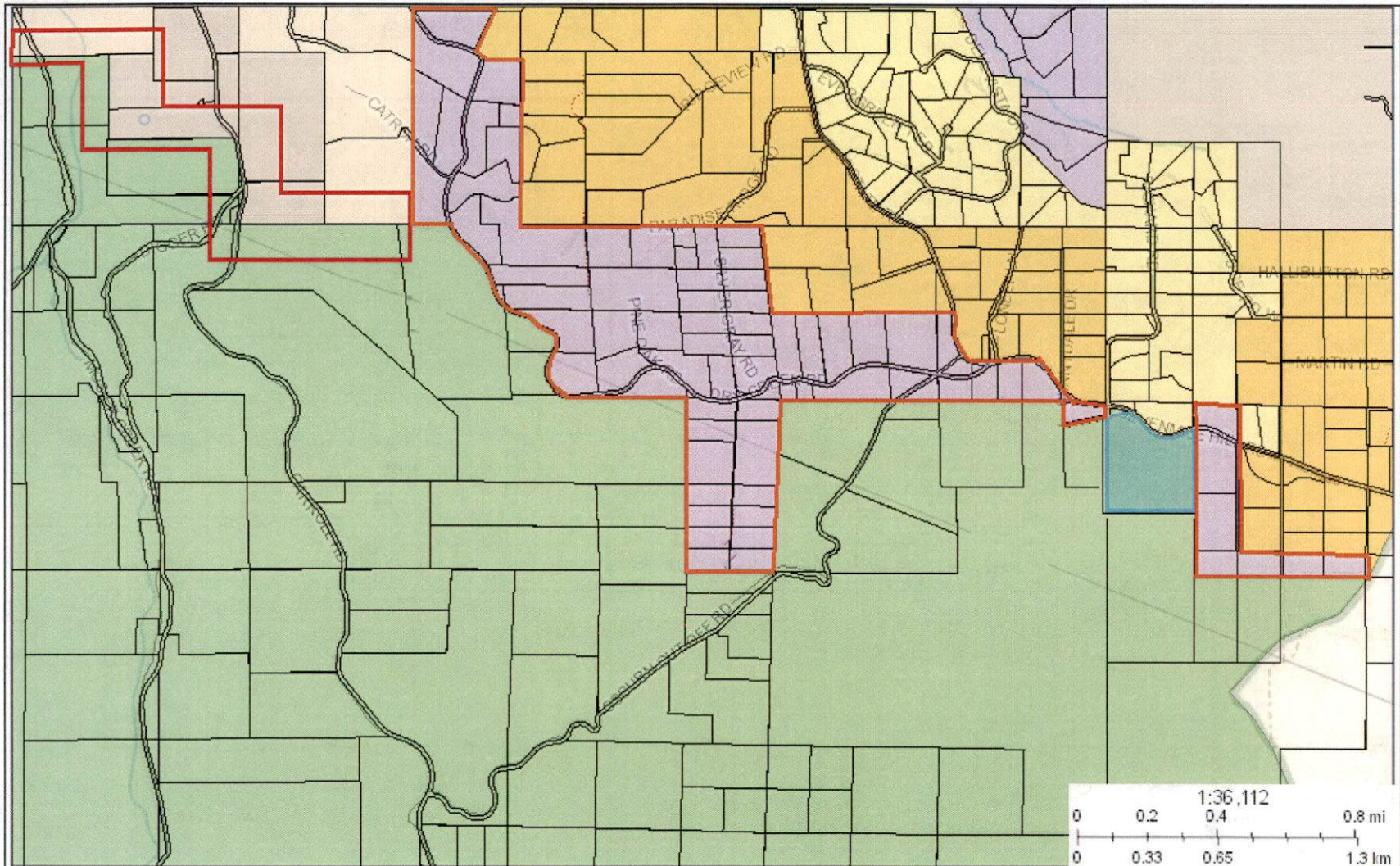
General Land Use History, Zoning, and Use

ATTACHMENT A



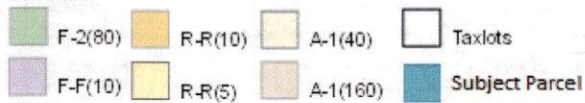
OAR 660-004-0028(2)(b)


General Land Use History, Zoning, and Use ^{ATTACHMENT A}




11/22/2021, 12:02:08 PM

WC-Zone



 Border between lands zoned for resource use

 Border between lands zoned for resource use and residential use

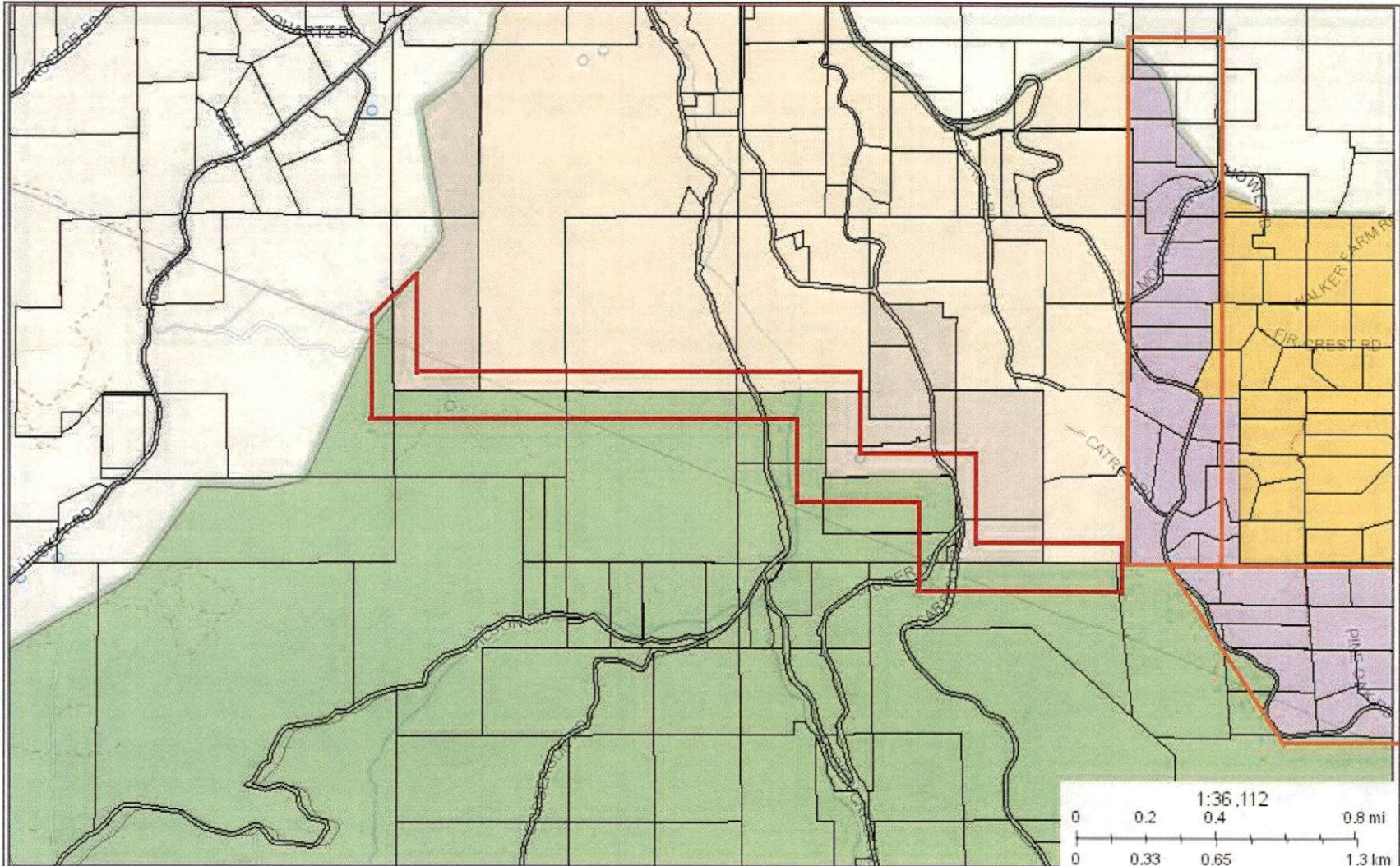
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OAR 660-004-0028(2)(b)

General Land Use History, Zoning, and Use ^{ATTACHMENT A}



11/22/2021, 12:02:08 PM

WC-Zone

F-2(80)	R-R(10)	A-1(40)
F-F(10)	R-R(5)	A-1(160)



Border between lands zoned for resource use



Border between lands zoned for resource use and residential use

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OAR 660-004-0028(2)(c)

OAR 660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

(2) *Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:*

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

Relationship Analysis

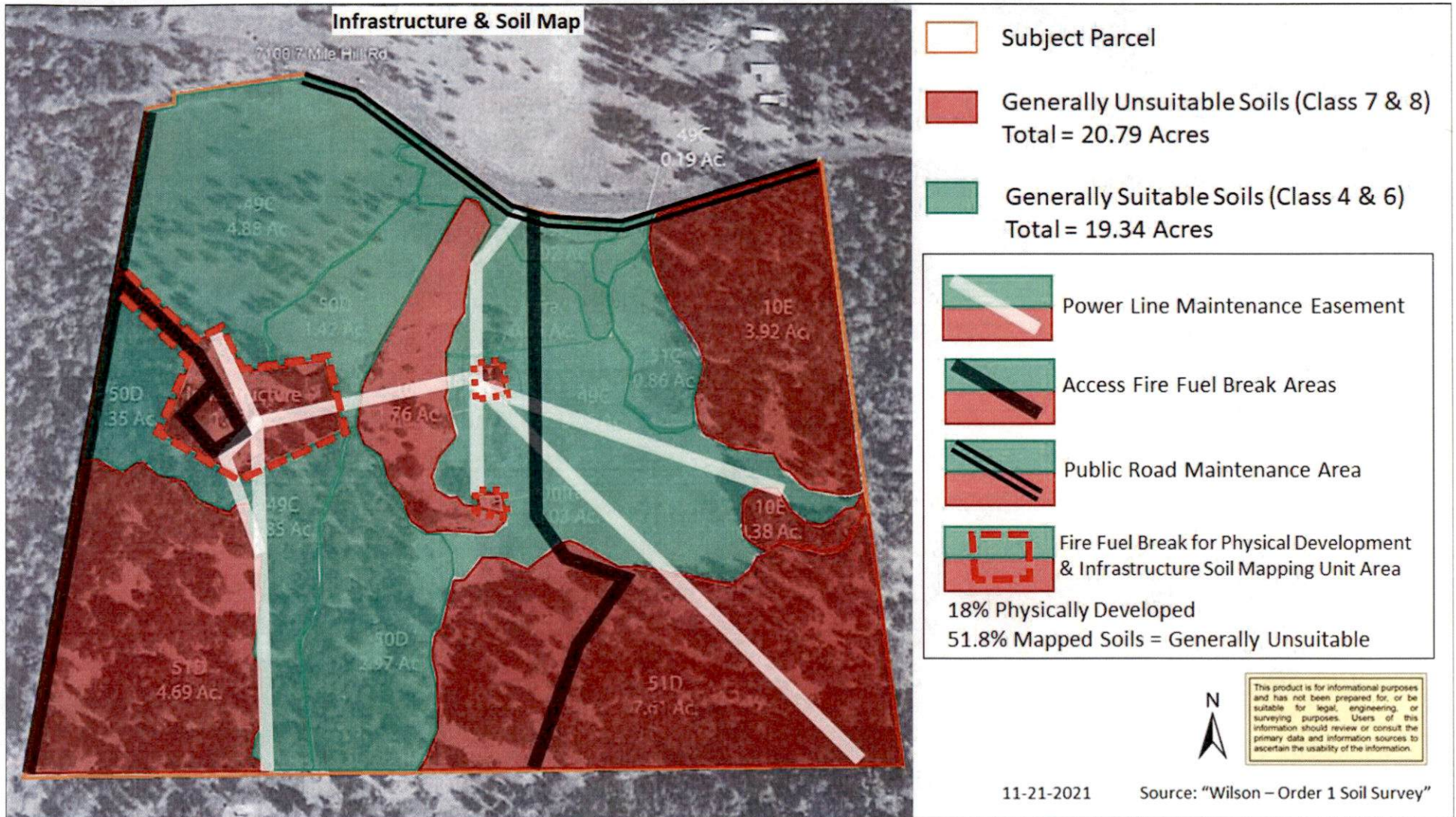
- **Soils**
- **General Land Use History, Zoning, and Use**

OAR 660-004-0028(2)(c)

Relationship Analysis

- “Wilson – Order 1 Soil Survey” and 1982 USDA Order 3 Soil Survey differ
- The subject parcel’s existing “residential use” is more in line with residentially zoned properties to the north, northwest, and east
- The subject parcel’s resource designation & zoning does not fall in line with the land use designation and zoning pattern of the area
- The parcel’s development combined with generally unsuitable soils diminish relationship with active forest uses to the south, southwest, & west

OAR 660-004-0028(2)(c)



Relationship Analysis Conclusion

- Relationship with lands south, southwest, and west diminished
- Relationship with lands north, northwest, and east increased

OAR 660-004-0028(3)

OAR 660-004-0028(3)

Exception Requirements for Land Irrevocably Committed to Other Uses

- (3) *“Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is ‘impossible.’ For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable;*
- (a) Farm use as defined in ORS 215.203;*
 - (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120;*
 - (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).”*

OAR 660-004-0028(3)

Resource use is impracticable due to combined reasons:

- Diminished soil capacity
- Scattered mapping of “generally suitable soils”
- Existing development and parcel size
- Non-farm residential use
- Risk of increased conflict of uses
- Surrounding residential uses (north, northwest, and east)
- Not in line with land designation & zoning map

OAR 660-004-0028(6)

OAR 660-004-0028(6)

(6) Findings of fact for a committed exception shall address the following factors:

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities on the resulting parcels) or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels.”

OAR 660-004-0028(6)

OAR 660-004-0028(6)

(6) Findings of fact for a committed exception shall address the following factors:

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

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

OAR 660-004-0028

Staff Conclusions and Recommendations

- Based on the facts, analysis, and findings, the request meets the required standards of OAR 660-004-0028
- Staff recommends approval of the request under the physically developed exception

PLANNING COMMISSION OPTIONS

- A. **Continuation:** Based on testimony and evidence presented at the hearing, continue the hearing for more time to deliberate and/or consider the information provided. Additional testimony may provide specific reasons to support a recommendation of approval or denial.
- B. **Continuation:** Based on testimony and evidence presented at the hearing, request additional information of staff or the applicant, and keep the record open for additional information to be provided until the next hearing at a date and time certain.
- C. **(1) Recommend Approval:** Based upon all of the findings of fact and conclusions of law set forth within the Staff Report, the Planning Commission can recommend approval of the exception and zone change under OAR 660-004-0025 Exception Requirements for Land Physically Developed to Other Uses, and recommend that the proposed exception area be rezoned to Forest-Farm (F-F 10) Zone (Non-Resource) and that the corresponding plan, map and ordinance changes be made.
- (2) Recommend Approval:** Based upon all of the findings of fact and conclusions of law set forth within the Staff Report, the Planning Commission can recommend approval of the exception and zone change under *OAR 660-004-0028 Exception Requirements for Land Irrevocably Committed to Other Uses*, and recommend that the proposed exception area be rezoned to Forest-Farm (F-F 10) Zone (Non-Resource) and that the corresponding plan, map and ordinance changes be made.
- D. **Recommend Approval With Modification(s):** Approve the request with amended findings of fact and/or new conclusions of law.
- E. **Close the Public Hearing, and Continue Deliberation to Work Session:** Acknowledge that all required evidence has been presented and heard. Continue deliberations with a scheduled work session to review and edit individual findings before making a final decision.
- F. **(1) Recommend Denial:** Based upon all of the findings of fact and conclusions of law set forth within the Staff Report, the Planning Commission can recommend denial of the exception and zone change under *OAR 660-004-0025 Exception Requirements for Land Physically Developed to Other Uses*, and recommend that the Commission deny the request for a Zone Change, Goal Exception, and Comprehensive Plan Amendment.
- (2) Recommend Denial:** Based upon all of the findings of fact and conclusions of law set forth within the Staff Report, the Planning Commission can recommend denial of the exception and zone change under *OAR 660-004-0028 Exception Requirements for Land Irrevocably Committed to Other Uses*, and recommend that the Commission deny the request for a Zone Change, Goal Exception, and Comprehensive Plan Amendment.
- G. **Recommend Denial With Modification(s):** Deny the request with amended findings of fact and/or new conclusions of law.

ATTACHMENT A

Questions?

Pioneering pathways to prosperity.

ATTACHMENT B

December 7, 2021

RE: File #921-18-000086-PLNG. Land Use Board of Appeals Remand (LUBA No. 2019-065)
Comprehensive Plan Amendment; Exception to Statewide Planning Goal 4; and Zone Change from
Forest, F-2 (80) to Forest-Farm F-F (10) by David Wilson

Sheila Dooley
3300 Vensel Rd.
Mosier, Oregon

The USDA soil survey found the soils to be more productive than average and suited to growing Ponderosa Pine and Oregon white oak. These trees as well as fir trees are growing on the areas not mowed and are visible in the aerial photographs.

The stated goal of the applicant's soil survey was to show a preponderance of unsuited soils. The applicant can't say with any certainty that this is the case. Out of 40.13 acres, 20.79 were claimed to be unsuitable, a difference of only 1.45 acres.

The soil survey included areas incorrectly labeled as infrastructure such as vacant land, treed areas, and illegal and unusable buildings. Removing these results in a preponderance of suitable soils.

There is a margin of error involved in using 23 test sites and then extrapolating the results to apply to areas around them.

A review of the applicant's Soil Survey found the following discrepancies:

1. The soil survey includes a soil type not found in Northern Wasco County: 51C. It shows up nowhere else but on the applicant's property. Soils types listed on PC 1-425
2. The soil type 10E Bodell was identified in areas containing Ponderosa Pine and Oregon White Oak, trees that should not be growing on this soil type according to the Soil and Water Conservation District.

This calls in question the validity and accuracy of the soil survey.

The staff analysis also contains discrepancies such as:

1st. The claim that the subject parcel's use is more in line with properties with residential zoning.
Response: This property is part of a 109-acre tract, historically used for farming alfalfa hay and grazing, and containing some merchantable timber. The other 69 acres are in farm deferral.

2nd. The claim that the property is surrounded on three sides by existing residential development and there would be potential conflicts with forestry use.

Response: There is no house on the west side and the applicant's house is on the south side. Both properties are zoned F2. To the north across the road is a tree farm. The house to the east is on the other side of the property. The description of potential conflicts with forestry use is unfounded.

ATTACHMENT B

3rd. The claim that the property can't be used to make a profit and has been removed from farm/forest tax deferral.

Response: This was most likely done by the applicant to support his claim that the property should be rezoned. Yet he is planning to clear and farm an additional 20 acres on his adjoining property (which is in farm deferral and makes a substantial income according to his attorney) rather than utilize this property. Choosing to not actively farm this parcel, plant trees or let them come back naturally, or apply for a tax deferral was done to support the claim that the property should be rezoned.

The request for a rezone should be denied.

ATTACHMENT C

December 7, 2021

RE: File #921-18-000086-PLNG. Land Use Board of Appeals Remand (LUBA No. 2019-065) Comprehensive Plan Amendment; Exception to Statewide Planning Goal 4; and Zone Change from Forest, F-2 (80) to Forest-Farm F-F (10) by David Wilson

Phil Swaim
3300 Vensel Rd.
Mosier, Oregon

In 2014 there was a previous application to rezone this and several adjacent parcels from F280 to FF10. This was denied by Wasco County after the county received a letter from DLCDC and ODF in strong opposition. They disagreed with the claim that the BPA Powerline would serve as a firebreak in the event of a fire. The Mosier Creek Fire of 2020 proved this to be correct as the fire raced across the Powerline easement and onto adjoining forestland.

Additional development would push the wildland-urban interface more deeply into forestland to the detriment of forest management and increase fire cost and risk.

They did not believe the subject property was either Physically Developed or Irrevocably Committed and recommended that the existing zone and plan designations be retained.

The applicant has put forth a new site plan that is drastically different from the site plan in the LUBA Record. There are imaginary buffer requirements included in the Remand Request letter. These include a 50 foot road setback along Seven Mile Hill Rd. when none is required. On the applicant's property, this supposed 50 foot buffer zone contains 60 plus pines of 2 to 40 feet in height.

The electric coop maintains a 30-foot easement on a primary service line but not on a line that just serves one or two customers.

On the new site plan, the 2660 square foot house has tripled to 8000 square feet. The power line that runs the length of the property for about 1320 feet has increased to 10,0024 feet., running every which way to 3 proposed trailer sites with septic and drain fields. It seems that the new site plan is what Mr. Wilson wishes he had, not what actually exists. So what are we responding to?

Mr. Wilson claims that the soil is no good for either ag use or growing trees. However 2/3 of the 40 acre parcel is tree covered, 90% of the alleged bad soils on the south and east are tree covered. There are over 500 pine trees growing on 28 acres, many that are merchantable. The balance of the acreage, the mowed hay field, is of prime soil type that could grow about anything. Trees would naturally reseed if it was left unmowed, even with Douglas fir, as evidenced by a water course down the center of the property as shown by a willow tree growing there.

According to OSU Extension, "If the native vegetation on the site includes healthy Ponderosa Pine, that's a good indication that species will respond favorably if planted."

Please reject the proposed zone change.



Daniel Dougherty <daniel@co.wasco.or.us>

Wilson Remand Hearing testimony

1 message

Jillian Barker <bjillian187@gmail.com>
To: daniel@co.wasco.or.us

Tue, Dec 7, 2021 at 2:59 PM

December 7, 2021

RE: File #921-18-000086-PLNG. Land Use Board of Appeals Remand (LUBA No. 2019-065) Comprehensive Plan Amendment; Exception to Statewide Planning Goal 4; and Zone Change from Forest, F-2 (80) to Forest-Farm F-F (10) by David Wilson

Jill Barker

P.O. Box 572

Mosier, Oregon

Regarding Wilson's remand application, the statement that there is a "literal moonscape nature of the adjoining properties south of the subject property" can not be substantiated. That same land to the south and east has been Grant Robbins' productive hay and grazing fields since the 1970s. To the northeast of the property is Ortle, a productive ranch owned and operated by Kortge Wheat and Cattle for over 50 years. These are hardly moonscapes.

The new site plan map submitted in the Remand application has changed considerably from the original site plan submitted in the original 2019 LUBA record. There is much new infrastructure shown that does not yet exist, such as 3 proposed trailer sites as well as additional driveways, powerlines and septic drain fields.

It appears that this nonexistent infrastructure has been included to add to buffer zones in an attempt to preclude forestry use. Future plans must not be included to create new buffer zones.

The applicant appears to be adding this proposed physical development to make a "physically developed" case after the fact. LUBA ruled that the property was not physically developed based on the evidence. Is the applicant trying to show that it is more developed than it actually is, suggesting that that it is "irrevocably committed" to non-resource use?

It is completely irresponsible to allow more residential development in a high fire risk, high wind area in an unprecedented drought condition with declining aquifers and wells.

The areas that have been mowed are very suitable for growing trees and in the past produced 3 crops of alfalfa each year. In 1977 I assisted in the purchase of alfalfa hay from that same field. The fact that the applicant is not using most of his property for forest purposes and has not replanted the open field with trees or let them grow back naturally does not make it any less valuable as forest land.

I find it obviously refutable to claim that soils on the applicant's property that are presently growing many trees are supposedly nevertheless incapable of growing trees due to unsuitable soil classifications. Some years ago in the process of doing fire fuel reduction on the property, the mechanical grub hoeing of the understory removed many young seedling and sapling trees in those areas. In spite of this, there are still numerous trees in the alleged "unsuitable" soil areas as shown in aerial photographs.

ATTACHMENT E

OREGON TRIAL ATTORNEY
STATE & FEDERAL COURT

MIKE SARGETAKIS
LAW OFFICE OF
MIKE SARGETAKIS, LLC
735 SW FIRST AVE, 2ND FL
PORTLAND, OR 97204

MIKE@SARGETAKIS.COM
(971) 808-1495

December 7, 2021

VIA ELECTRONIC MAIL ONLY

Wasco County Planning Commission
Attn: Daniel Dougherty, Senior Planner
2705 East Second Street
The Dalles, OR 97058
daniield@co.wasco.or.us

RE: File No 921-18-000086-PLNG (Wilson Goal Exception Remand)

Dear Wasco County Planning Commission:

These comments are provided on behalf of Sheila Dooley and Jill Barker, petitioners before LUBA in this above-referenced matter. For the reasons set forth below, Wasco County cannot approve the Goal Exception/Zone Change requested by applicant David Wilson. This parcel neither qualifies for a developed exception (as recognized by Staff, and as LUBA held as a matter of law); nor does it qualify for an “irrevocable commitment” exception.

DEVELOPED EXCEPTION

In the interest of keeping the comments on this portion of the application brief, I will point to LUBA’s opinion on this matter (*Dooley v. Wasco County*, LUBA No. 2019-065). LUBA was unequivocal when it held that this property does not qualify for a “developed” exception. Nothing has changed since that time, other than the applicant’s attempt to manipulate the numbers. The law is clear: structures allowed by Goal 4 cannot be counted toward a physically developed exception. *See* OAR 660-004-0025(2). The roads, the dwelling, and the barns are allowed under Goal 4 as incidental to farm uses. Staff correctly noted these problems with the application, and its draft findings correctly lead to the conclusion that a Developed exception is inappropriate.

IRREVOCABLY COMMITTED EXCEPTION

Again here, LUBA’s opinion in *Dooley v. Wasco County* is instructive. The “focal criteria” when analyzing an irrevocably committed exception is the relationship between the subject property and adjacent uses. OAR 660-004-0028(2); *see also, DLCD v. Curry County (Pigeon Point)*, 151 Or App 7, 11, 947 P2d 1123 (1997) (holding that the “fundamental test” for irrevocably committed exception is the relationship between the subject property and the surrounding area); *Converse*, 39 Or LUBA at 441.

ATTACHMENT E

The County must demonstrate *how* existing uses on adjacent lands render resource use on the subject property impracticable. *DLCD v. Wallowa County*, 37 Or LUBA 105, 111 (1999). Stated another way, a committed exception “must be based on facts illustrating how past development has cast a mold for future uses.” *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 501, 724 P2d 268 (1986). The mere presence of adjoining residential uses is not a sufficient basis for concluding that resource lands are irreversibly committed to non-resource uses. *Gordon v. Polk County*, 54 Or LUBA 351 (2007); *Waymire*, 39 Or LUBA at 452-53. Nor is the “occasional inconvenience” that a rural resident must be willing to accept sufficient to approve a Committed exception. *Friends of Linn County v. Linn County (Schwindt)*, 42 Or LUBA 235, 246 (2002).

While, as with the prior hearing on this matter, staff has once again chosen to rely on a dictionary definition for “impracticable,” there is no shortage of case law which the County should rely on instead for its determination. The standard for impracticability “is a demanding one.” *1000 Friends of Oregon v. Yamhill County*, 27 Or LUBA 508, 519 (1994). The test is not one of commercial viability. The question is whether the subject property is capable of generating a gross income. *See, 1000 Friends of Oregon v. Benton County*, 32 Or App 413, 426 (1978).

Reliance upon longstanding adjacent rural uses is insufficient to demonstrate that resource use of the proposed exception area has become impracticable in the absence of recent or imminent changes affecting the subject property. *Wodarczak v. Yamhill County*, 34 Or LUBA 453, 460-461 (1998) (*citing Jackson County Citizens League*, 38 Or LUBA at 365-366).

Staff notes that “a majority of the north, northwest, and east adjacent parcels contain active registered addresses, and are generally smaller in size than those located to the south, southwest, and west.” Staff report at p. 72. And further notes that “the size of the subject parcel, and its historical and current use is more in line with those neighboring north, northwest, and east parcels.” *Id.* However, this isn’t quite true, if one looks at the map immediately preceding this finding. This subject parcel is 40 acres, while the neighboring parcels used to justify this finding are all less than 15 acres. While the applicant seeks to rezone this parcel so that it may in the future be subdivided to smaller parcels more like this, the subject parcel is actually more like the larger parcels to its south and west, which are, as staff describes “in active forestry use” Staff Report at 67.

Staff’s next finding here is confusing- it simultaneously describes the different (and if accurate, seemingly anomalous) soil types on this property that make it unsuitable for growing the very trees which satellite views show it growing, while recognizing the surrounding properties on three sides as “actively in forest use” but saying nothing of the satellite views showing ponderosa pine trees growing across all properties in the area.

The question, pursuant to OAR 660-004-0028(3) is whether:

- 1) farm use as defined in ORS 215.203;
- 2) propagation or harvesting of a forest product as specified in OAR 660-033-0120; and,
- 3) forest operations or forest practices specified in OAR 660-006-0025(2)(a) are *impracticable* [as defined above].

ATTACHMENT E


The historic, and current existence of ponderosa pine throughout this tract seem to foreclose the idea that propagation or harvesting of a forest product is impracticable here. One look at the “soil suitability map” provided by the applicant, and presented in the staff report at p. 83 shows that the areas designated “generally unsuitable” are overlaid over large swaths of mature ponderosa pine trees. Not only that, but the soils dubbed “suitable” are largely in mowed areas, or areas where there are sparse trees, as opposed to staff’s assertion that those areas are dominated by development. This is flatly not borne out by the very image submitted by the applicant and placed before this body.

As LUBA discussed in its opinion remanding this application, “the county’s finding that conflicts with residential uses resulting from spraying are not a basis to find that resource use of the subject property is impracticable.” LUBA No. 2019-065 at 14 (internal citation omitted).

On Page 82 of the Staff Report, staff concludes that “resource use on the subject property has **become** impracticable.” (emphasis added). Notably absent is any analysis or even description of the recent changes responsible for this metamorphosis. To the contrary, staff points to the applicant’s continued use for livestock grazing on the property for the last three years. Staff relies on a dictionary definition for guidance on deciding resource uses are impracticable, ignoring the dearth of case law from LUBA already in the Record describing what this standard actually means. This is the same tack taken by the County before, which LUBA found to be insufficient to support an irrevocable commitment exception.

CONCLUSION

For each of the reasons set forth in this comment, as well as all of the comments provided by my clients directly, and the facts in the whole Record, the applicant has failed to meet the requirements for either a developed, or a committed exception, and the draft findings as presented are insufficient to support a Decision granting this application. This application must be denied.



Mike Sargetakis
Attorney for Sheila Dooley and Jill Barker

ATTACHMENT F

November 24, 2021

Dear Wasco County Planning Commissioners,

RE: File #921-18-000086-PLNG. Land Use Board of Appeals Remand (LUBA No. 2019-065) Comprehensive Plan Amendment; Exception to Statewide Planning Goal 4; and Zone Change from Forest, F-2 (80) to Forest-Farm F-F (10) by David Wilson

The following comments are in response to the new evidence submitted by the applicant.

1. Soil Assessment

In William Sumerfield's letter to Interim Director Kelly Howsley-Glover, dated July 9, 2021 on page 2, last sentence, he states: "With over half the property consisting of unsuitable soils, there is virtually no land available to support resource use."

Photographs of the subject parcel contradict this statement as numerous Ponderosa Pine, Oregon White Oak and fir trees are present on the property in the areas that haven't been mowed LUBA Record photographs on pages 977-982 show this. On Google maps (7000 Seven Mile Hill Rd., The Dalles) you can clearly see the furrows/lines where the applicant has mowed. Furthermore the property across the road contains similar soil according to the USDA. In the past it was used to grow alfalfa hay and is now used as a tree farm.

Photo 1: Tree farm across road



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The subject property has historically been used for farming, starting from at least the '60s if not earlier. Sam Decker farmed property on both sides of the road and had 3 cuttings of alfalfa per year in the mid-70s according to the neighbors. When the property was sold to Larry Black in the late '70s he purchased Mr. Decker's farm equipment (**bill of sale attached as Exhibit 1**) and continued farming the land and also had cattle grazing there in the late '70s. David Wilson continued the farm use up to the present time as evidenced by the mowing lines.

In the Planning Commission Agenda Packet from the initial approval of this application, staff noted that the USDA soil survey identified two soil types on the subject parcel: 49C and 50D (Wamic Loam – See Exhibit 5) and that both are Class IV soils, type 4a. LUBA Record at p. 1338. The staff report goes on to note that the site index for both is 70 which is an indication of the potential productivity and translates to the high end for potential yield for Class 6 for Ponderosa Pine.

The soil survey done by the USDA found the soils to be more productive than average (p. 821 of LUBA Record) and suited to growing Ponderosa Pine and Oregon white oak. These trees as well as fir trees are growing on the areas not mowed and are visible in the aerial photographs.

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On page 3 of the applicant's Soil Assessment it states that "the subject property is complex and diverse." According to the Wasco County Soil and Water Conservation District staff, there are inclusion areas that could help account for this assessment showing poorer soil than what the USDA maps show. Inclusion areas contain other soil types within a soil type. There may be many inclusions present on this property according to WCSWCD.

The areas not used to grow hay on this property are similar in appearance to much of the other Mosier area forest zone properties. Oak, fir and pine trees are often seen growing together throughout the Mosier area. Oak and pine trees are similar in their soil requirements according to the Wasco County Soil and Water Conservation District staff. The oak and pine habitat is a unique habitat of high value to many animal, bird and insect species.

The applicant's Soil Assessment incorrectly states that the soils on the south side of the property are mostly unsuited soils (51D). The photograph taken from the county road facing south clearly shows conifer and Oregon White Oak trees growing throughout this area. The applicant's map shows that these areas are tree covered.

Photo 2: View to south



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The area on the east side of the property and the southwest corner that are labeled as unsuitable soils are also tree covered. Approximately 90% of the areas that are labeled by the applicant's lawyer in his recent letter as unsuitable have trees growing on them.

Photo 3: View to east and south



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According to the Wasco County Soil and Water Conservation District, the areas that have been used to grow alfalfa hay and oats can also grow trees. If you can grow alfalfa or oats on the soil, you can grow trees.

Photo 4: View to west



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Photo 5: View to west



Photo 6: View to west



The applicant's Soil Assessment also incorrectly labels a total of 1.57 acres as infrastructure. The 1.48 acre infrastructure area includes the 2,660 square foot house and a couple of outbuildings. This area also includes vacant land that appears to be in a corral and areas with conifers. The other .09 acres labeled as infrastructure are for the illegal dwelling and a dilapidated unused barn with no roof. These are the only areas classified as Class 8 in the survey.

On page 3 of the Soil Assessment it states that a slim majority (preponderance) of the lot or 51.8% is made up of Class 7 and 8 soils. The Legend on page 13 breaks this down:

20.79 acres generally unsuited soils
19.34 acres generally suited soils

Removing the illegal and unusable buildings changes this to 20.70 unsuited acres and 19.43 suited acres, a difference of 1.27 acres out of 40.13 total acres. If the vacant land and treed areas labeled as infrastructure are instead added to the suited acreage, there is a preponderance of suited soils.

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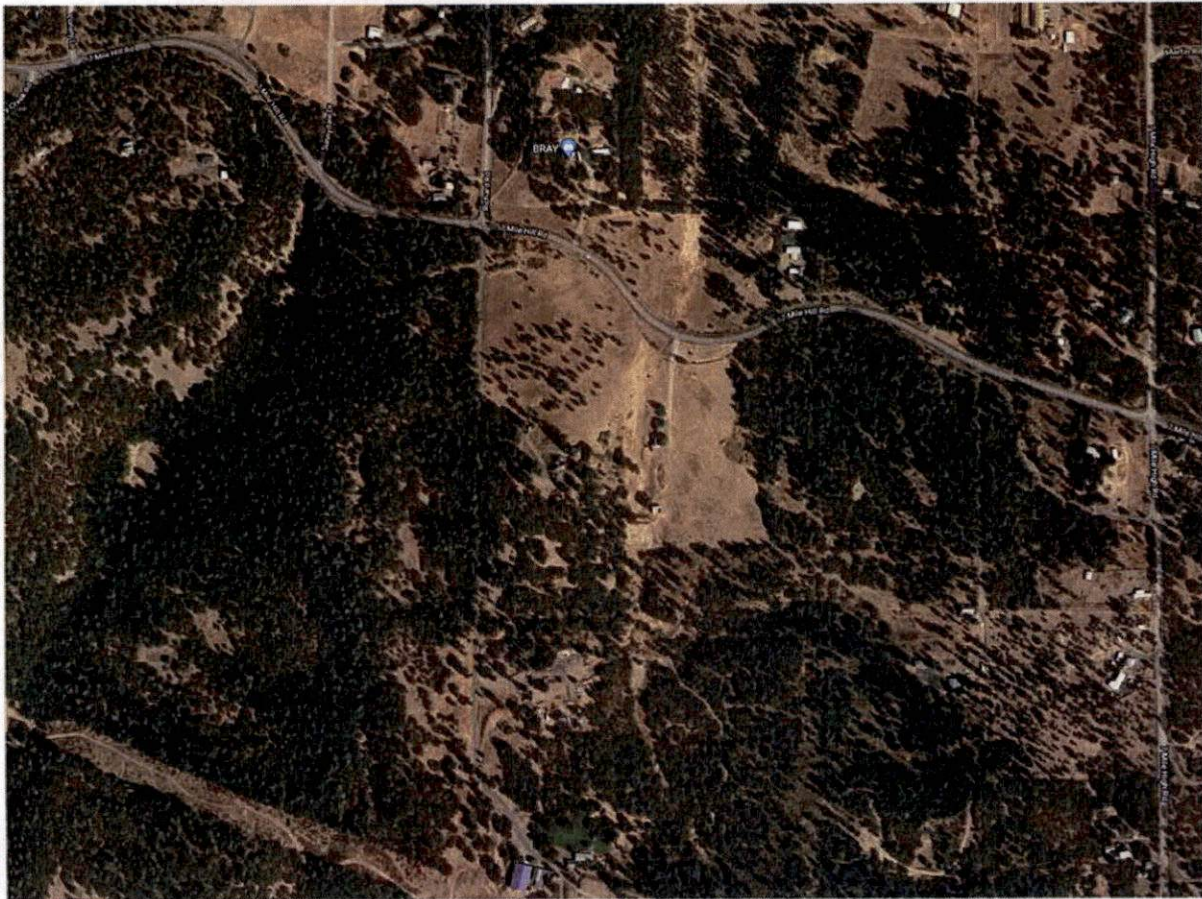
Another consideration is that a total of 23 locations were tested with the results extrapolated to apply to the areas around them. There is also the margin of error to consider especially when inclusion areas containing different soil types are involved.

On page 13 of the Soil Assessment, the map used to calculate the soil type areas does not contain 90 degree angles on the south side. As a result, the supposedly unsuited soil areas are overrepresented.

The Soil Assessment Completeness Review (Page 1) included with the Soil Assessment states that “the county may make its own determination as to the accuracy and acceptability of the soils assessment. DLCD has reviewed the soils assessment for completeness only.” The Soil Assessment was done with the stated goal of securing a Plan Amendment Zone Change (page 2 of Soil Assessment Release Form). This was to be accomplished by finding a preponderance of unsuited soil.

2. Aerial Photo of Subject Property and Adjoining Area

In the Remand Request letter on page 3, the applicant states “there is a clear line of demarcation between productive lands further to the west of the subject property, and the subject property, and lands immediately adjacent to the south and west of the subject property.” He states that his aerial photo shows a “moonscape” south of the property. This is not evident on Google maps of the surrounding area.



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The only line of demarcation between his property and the surrounding properties is to the northwest due to his mowing of the subject property. He has also cleared an area around the house. Soil types don't follow property lines.

Adjoining this property to the south is a 69-acre parcel owned by the applicant and in farm deferral. The subject property is part of the 109-acre tract that he owns. In 2018 the applicant stated that he needed a 7,000 square foot building and a 2,500 square foot agricultural exempt building to support his agricultural/farm use. In January 2018 the Wasco County Planning Commission approved his request on appeal (PLAAPL-17-10- 001 Wilson Appeal) and overturned the Planning Director's denial of retroactive approval of a 7,000 square foot agricultural exempt building located on his adjoining 69 acre parcel. **(See attached Exhibit 2: Planning Commission meeting minutes of January 23, 2018 page 3)**

At the January 2, 2018 hearing Mr. Sumerfield stated that "Applicant makes substantial income from farm production each year the property has been in deferral." **(See attached Exhibit 3: Planning Commission meeting minutes of January 2, 2018, page 20)**

The Planning Commission found that "the applicant has met the need for the size of the building in conjunction with the existing and future farm use as described in the farm plan." (January 23, 2018 meeting minutes, page 3)

South of that is commercial forest land zoned F-2 80. Pages 4 and 5 of the LUBA Final Opinion and Order describe the property and surrounding area in detail. In regards to the property south and west, the record states "To the south of that 69-acre parcel for approximately five miles is that zoned F-2 and managed for forestry and grazing. Record 25. To the west of the subject property lies a split-zoned 16.3 acre property with 5 acres zoned F-F 10, and the remaining approximately 11 acres zone F-2, and a 439-acre parcel zoned F-2 and managed for commercial forestry. All of the parcels that are immediately adjacent to west, east and south of the subject property possess similar soil types and slopes as the subject property."

3. Physically Developed Map & Area Calculations

The 40-acre parcel is part of a 109-acre tract zoned F-2 80 and owned by the applicant. On page 12 of the applicant's Soil Assessment, he has submitted a map of the tax lots in the surrounding area. This map is misleading as many of these tax lots to the south, southeast and west are part of larger tracts, in commercial forestry, zoned F-2 80 and therefore unbuildable. (LUBA Record Vicinity Map, page 8) **(Also see attached Exhibit 4: Tract map)**

In 2013 there was an application to rezone this property and several adjacent parcels to FF-10. The application was denied by the County Commission after the County received a letter from the Department of Land Conservation and Development (DLCD) and Oregon Department of Forestry (ODF) in strong opposition to this rezone due to its value as forest land. (Supplement to Complete LUBA Record pages 788-790)

DLCD rejected the arguments for a rezone (including the being physically developed and irrevocably committed arguments) and recommended that the existing plan and zone designations be retained. At the County Commission hearing there were also concerns expressed by the Board of County Commissioners regarding fire safety and water supply.

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In his Remand Request letter (page 3), the applicant stated that he is taking LUBA up on its invitation to attempt to quantify the amount of land unable to be used due to applicable buffers. The letter goes on to identify the following buffers, most of which are not actually required buffers:

- a. Power Lines: buffer of 15 ' either side from center line

Response: The Wasco Electric Coop usually trims tree limbs so that they do not touch the power lines. Photos 7 and 8 on following pages are examples of trees recently trimmed by the Wasco Electric Coop. These are not on the applicant's property.





Note: These examples of trees trimmed by Wasco Electric Coop are not on applicant's property.

In his Remand Request letter on page 3, the applicant states that there are 10,024 linear feet of power lines on the property. The LUBA Record on page 9 with his site plan shows overhead power lines running the length of the property, approximately 1,320 linear feet not 10,024 feet. These are the only power lines shown on the site plan submitted with his application. **See attached Exhibit 5: Site Plan.**

The map submitted with the Remand Request does not match the site plan in the application that went to LUBA. It contains proposed, not current, development. The additional power lines are nonexistent and are not visible from the road. The three trailer sites were not part of the original site plan either and I question whether these trailers would be permitted on F-2 80 property. It appears that the applicant is adding this proposed development to make a physically developed case after the fact. LUBA ruled that the property was not physically developed based on the evidence.

b. Structures: buffer of 50' each side from the following structures: Log home, barn #1, barn #2, lean to, old homestead home, and old homestead barn

Response: The Wasco County LUDO does not prohibit trees within 50 feet of a building. The 50-foot wide fire fuel break maintenance standards include having trees limbed up approximately 8 feet from the ground and removing underbrush. **(See attached Exhibit 6: LUDO Section 10.120: Defensible Space-Clearing and Maintaining a Fire Fuel Break.)**

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In addition the applicant's buffer calculations include illegal and unusable buildings that should not be included. The old homestead home was replaced by the log home and is an abandoned illegal dwelling. What he refers to as the old homestead barn is an unusable dilapidated metal building with no roof.

The dimensions of the log house are shown as 80 x 100 or 8,000 square feet in his calculations but only 2,660 on the site plan.

c. 50' buffer along 7 Mile Hill Road

Response: Wasco County Public Works Director Arthur Smith (October 28, 2021 email) said that there is no defined or statutory setback for roads. "In Mosier, we have trees and other vegetation within 2 feet of the road shoulder...We would be cutting down trees for 100 years to clear every county road for 50 feet." **See attached Exhibit 7: Arthur Smith October 28, 2021 email**

D. 50' buffer along driveway easement

Response: There is no 50' buffer requirement along the driveway easement. A minimum driveway width of 20 feet is required (Wasco County LUDO Section 10.140 – Access Standards). **See attached Exhibit 8: Wasco County LUDO Section 10.140.** As roads are uses allowed by Goal 4, they are not considered as physical development.

As the entire record, including the new evidence does not demonstrate that the property is either physically developed to such an extent that it is no longer available for resource use or irrevocably committed to non-resource uses, the rezone request should be denied.

Sincerely,

Sheila Dooley
3300 Vensel Rd.
Mosier, Oregon 97040